Vol. IV
TRANSCRIPT OF RECORD

(Pages 1319 to 1675)

Supreme Court of the United States

OCTOBER TERM, 1946

No. 37

EDNA W. BALLARD AND DONALD BALLARD,
PETITIONERS,

vs.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR CERTIORARI FILED JANUARY 28, 1946.

CERTIORARI GRANTED MARCH 25, 1946.

No. 10059

United States

Circuit Court of Appeals

For the Ninth Circuit.

EDNA W. BALLARD and DONALD BALLARD,
Appellants,

vs.

UNITED STATES OF AMERICA,
Appellee.

Transcript of Record

In Four Volumes

VOLUME IV

Pages 1319 to 1623

Upon Appeal from the District Court of the United States for the Southern District of California, Central Division.

PARKER PRINTING COMPANY, 543 SANSOME STREET, SAN FRANCISCO

Mr. Lazarus: If the Court please, in view of the instruction and authority handed to the Court this morning by Government counsel, I feel that it could not posibly be deemed error as long as the witness took the stand and testified to something regard [832] ing it.

Mr. Cannon: I don't intend to argue it. I just want to assign it.

Mr. Lazarus: If the Court holds it is error, I wish to withdraw the statement and request that the jury be instructed to disregard it. However, I still stand on the statement made.

The Court: Have the defense any other authorities except Caminetti against the United States found in 242 U. S. 470?

Mr. Cannon: Not at this moment. I don't care to argue the matter, anyhow.

The Court: I was just wondering if there was any other authority that you had at this time.

Mr. Cannon: No.

The Court: For the present I will have to let it stand. The Government counsel have submitted Caminetti v. United States found at 242 U. S. 470, but if counsel have some authority that may be a modification of this opinion, then I will so instruct the jury.

Mr. Cannon: I will ask to have an exception to your Honor's ruling.

The Court: Yes.

Proceed.

Mr. Lazarus: Now, in this deposition that Donald

gave in the case of Ballard v. Ballard—it was read in the record here—he was asked this question (and incidentally this was in April or May of 1940):

"Have you, yourself, had any experiences with the ascended master Saint Germain?"

He answered: "No, I have not."

Now, that doesn't have anything to do with a fraud case of this sort. There was no reason for Donald Ballard to try to protect anybody, including himself, at that time; consequently we must assume, gentlemen, that that statement made by him at that [833] time was the truth then and that he could not so testify in court here without incriminating himself, and thus did not care to testify on that subject matter of his association with the ascended masters.

As far as Donald Ballard is concerned, he lived luxuriously from this movement. Exhibit 151 showed that Donald Ballard had $11,000 in five months, and yet we find Mrs. Ballard berated Donald severely in that letter for using all of that money. He should have been berated. He was a spoiled child to require that much money and at his youthful age, or even at any age as far as that is concerned, coming from sources such as this. But we find in "The Voice" of September 1937 on page 8 the statement from an ascended master: "Our beloved Donald has but to open his mouth and whatever is required floods forth. Many of you are coming to the same point."

Obviously they must have been referring to precipitation then. Yet Donald Ballard was berated for taking $11,000 from his parents when he, as far back as 1937, had but to open his mouth and whatever is required floods forth. Possibly they meant that whatever he asked from his mother and father, who made this fraudulent living from the I Am students throughout the country, would be forthcoming; but it seems when it says "Many of you are coming to the same point," that this obviously referred to precipitation.

Again John the Beloved's discourse in 1937 said:

> "There never were two so disinterested, selfless human beings on the face of this earth as these messengers are. Beloved people, I have told you that what comes into these books is put into this work to save humanity and America."

No wonder the money was given—to save America. We would all give money to save America if America needed saving as [834] the Ballards claimed it did.

Eloise Pinkerton of Toledo, Ohio, testified to a conversation with Donald Ballard where, after the meeting held in Toledo, he stated, indicating people grouped around his mother, "How much longer are those people going to swallow that stuff?" And Donald Ballard testified that he can't recall ever having seen Eloise Pinkerton. Possibly he didn't remember, but that young girl who attended Toledo

University would have no motive for getting up on the witness stand and lying in this case.

Catherine Rogers testified as to Donald Ballard's statement regarding his mother, the accredited messenger of the ascended master Saint Germain, where he told Catherine that his mother was the meanest woman on earth. That is the sort of outbreak that a young boy might give in to; certainly not if he knows his mother was an accredited messenger of the ascended master, Saint Germain.

Then we have Portia Terry describing Donald's temper at the Shrine Auditorium when he almost got up and exposed the entire movement and was kept down by Marjory and Mrs. Terry, and he told them why he got up on the way home in the automobile. He said he was going to expose the entire movement as a fraud. Possibly it is too bad for everyone concerned that he didn't do that at that time.

He told Portia Terry that he knew his mother had never been held in Jesus' arms, contrary to the public statements made by his mother.

At a staff dictation Donald Ballard argued with Saint Germain and that great lordly ascended master told Donald Ballard to shut up.

Donald Ballard read magazines and drank soda pop behind the curtains while the discourses were coming from the ascended masters.

Now, in conclusion, I first wish to state I will not go into any evidence relating to Edna W. Ballard. If she hasn't been [835] guilty of a fraud in this

case, then nobody has ever been guilty of fraud in any case. The entire subject matter revolves around her. Anything done by the other defendants had Edna W. Ballard's finger in it.

You will find that you will be addressed by the defense tomorrow. You will probably be spoken to by four very capable attorneys. You will probably find that they will throw a smokescreen or attempt to throw a smokescreen around the issues of this case. They will claim, undoubtedly, that this is a religious persecution and possibly excerpts from the Bible and other books will be read to show that miracles were alleged to have taken place there too. Now, gentlemen, the Government admits that miracles are set forth in the Bible, and it is not our purpose here to try and determine whether those miracles actually happened or didn't happen; but we do know this: that the Apostles, the various writers in the Bible and the people that compiled the Bible, put the Bible together, did not put these adventures, these great miracles together for the purpose of selling books. They were sincere people that had these visions and did not commercialize upon them.

The court will instruct you further, I am sure, that this case is not to be considered as a religious case. Just as the defendants will claim that the Government is persecuting a religion, so does the Government claim here that we are defending the rights most sacred to man, the right to believe and have faith in what he will, knowing that he need

not fear any spiritual or financial fraud from those who are seeking to impose their will upon others for purely selfish mercenary motives.

You gentlemen are trying this case—this important case I might add—in very unusual times. The country is at war. And a case of this sort makes it devolve upon you here to see that the defendants are convicted if you find that they are guilty of fraud so that those who are fighting for our country will find that they [836] have something to come back to worth fighting for.

Mr. Peterson: May it please the Court, counsel for the Government, and gentlemen of the jury: I think at this moment I ought to say a word or two in appreciation for the manner in which this case has been conducted by Judge O'Connor. I think that you join me and I know that counsel for the prosecution join me and I know that my own associate counsel join me, in appreciation of the fairness and the patience. He has occupied a very difficult and hard position in keeping this case going along a smooth and orderly line. All contested cases, gentlemen, are in the nature of a battle and, therefore, there is bound to crop up things that become unpleasant. It takes skill and ability to keep a steady hand. That we have had the pleasure of having in this case.

It may be doubted sometimes whether there is any particular point in arguing to a jury. I have no doubt lots of people sit where you gentlemen

are sitting and sometimes feel, "I wish that individual would sit down. We have heard the evidence. We don't need the help of argument." I don't blame you sometimes for having that thought. Still the human mind, being what it is, sometimes there are things we overlook. Sometimes the other fellow's viewpoint is valuable to get. Because once you leave the jury box and go into your deliberations, neither the Government nor I can say anything more to you. You then are the sole and final arbiters of the outcome of this case. So I shall make a few observations that I think may be helpful in presenting the viewpoints of the defense. I am not going to talk very long. I don't believe in long arguments. Maybe they are helpful and maybe [837] they are not. I don't think they are.

I can remember years ago when I first started to practice here we had a judge by the name of Henning who came here from San Diego to sit on the federal bench. He is a very fine gentleman indeed, and I once went in to ask him when I was starting here about how long he thought a person should argue. He said, "Well, I will tell you, there was a young preacher who was going to make his first sermon and he went in to see the old preacher to ask him how long he should talk. The old preacher said, 'Well, you can talk as long as you want to, but there are very few souls saved after the first 20 minutes.' "

I can't promise to stop in 20 minutes, gentlemen, but I am not going to bore you, I hope.

To those of us who have been around in federal practice, we know instantly what a mail fraud case is; but to the layman it is not always perfectly clear what Congress meant when that bill was enacted. In this country about the Government monopoly we had for many years outside of the coinage of money was the mails. That was strictly and still is a Government monopoly. It was to prevent any instrumentality of the Government being used in the commission of a crime that this statute was provided, and so the statute punishes people who devise a scheme to defraud others and effectuate its use by the use of the mails. That is the purpose of the law.

It was probably thought of about the time the big promotion enterprises started here. You will remember we have had several pretty good-sized ones in the oil business when this particular Southern California area was flooded with countless stocks and oil companies that were fly-by-night fellows that had nothing back of their enterprise except a desire to get money from the public. Another typical illustration came from New Mexico during the days of prohibition when—I think it was in the Police Gazette—some [838] enterprising fellow advertised two quarts of Canadian rye, $6.00 each postpaid. Well, Canadian rye, being a well-known whisky and difficult to get here, the gentleman had many customers and the unfortunate victim when he got his bottle found it was filled with the grains of rye like wheat. That is a typical mail fraud case. De-

spite the fact the purchaser wasn't entirely free from blame, it illustrates what a fraud is, because the man purchasing that in good faith wasn't getting what he paid for.

Supposing for instance, I claimed that I owned a thousand acres of land up here in the San Fernando Valley free and clear and I sold interests in that land and pretty soon it came to light that that land was mortgaged, so that everybody I sold to, when that mortgage was foreclosed, lost what they put in. There is a typical fraud. You can see that.

I don't see this case as a mail fraud case. I never have been able to see it as such. I think it is significant—and I don't think my memory is at fault—I don't remember Mr. Lazarus once in his opening argument adverting to the use of the mails in this case. Not once. If he did, I will stand corrected. It isn't a mail fraud case because it wasn't essentially such, you see. Any use of the mails here was entirely incidental. It isn't the kind of a thing that was meant to be tried out here in the federal court.

I wonder at your patience as you sat here day after day trying this kind of a case when we are in the midst of the world's worst holocaust, the greatest national peril that this nation has ever been confronted with. However, you have had a duty to perform, I have had a duty to perform, and the Government no doubt has had a duty to perform as they see it; but it seems to me that we have taken up

an awful lot of time on something of this kind which, to my mind, merely affects the private beliefs of different people.

The Constitution of the United States, which was a document [839] born after considerable work, toil and trouble—I guess what Mr. Churchill called "blood, sweat, and tears"—was born back in 1789. Before it was finally adopted, different delegates wanted different things added to it. They weren't sure that their liberties as American citizens were going to be protected. So there were some additions made to it. Among others was this: "Congress shall make no law abridging the free exercise of religion."

That means that if Brother Neukom wants to believe one thing about the hereafter and I don't want to believe anything about it and Mr. Cannon wants to take his particular religion, and Judge O'Connor has his, that we have a right to worship in that religion, we have a right to exercise our thoughts along that line and no one can tell us that we should or should not do so. That is a rather sacred guarantee, because there has been more bloodshed in the history of humanity over the differences of opinion in religion than probably any other cause of war. Our forefathers in drafting this United States Constitution were very wise to put that provision in. I hope that the day has not yet come when the courts will declare that that shall become inoperative or shall permit it to become inoperative.

We have seen the unfortunate spectacle in Europe

of the growth of the dictator nations, ruthless, cruel, bent only upon one thing, the level of the common mind down to that of the slave status—the very antithesis, the very contrast of the America that we live in today.

I hope when those of us who have gone abroad to fight the battles of our country and those of us who may still go will not come back to an America where they cannot find the exercise of religious freedom and this freedom of thought they found when they left to protect that country. Those are not words I am not saying merely to talk to you; those are words of a thinking American [840] citizen. It is well for us to consider.

A word or two about Mr. Lazarus' statement to you—and I am not going to touch on them much—he made one remark though that I can't let go without commenting on, and that was that the jury represented the Government. Let me tell you, gentlemen of the jury, you represent these defendants just the same as you represent the United States Government. You are the balance between the two, and you are the scales, just and impartial as that Goddess of Liberty who stands in New York Harbor with the scales in her hand upon which right and wrong are balanced. You are the arbiters in this case. You are the bulwark that the American forefathers had sense enough to build up against tyranny and oppression. It will be an awful sorry day in America if the jury system ever passes.

Clients say to me sometimes, "What do you think of the jury system?" and I say, "Well, it has its imperfections. Everything human has, but I wouldn't trade it for any other form of adminstering justice or arriving at facts."

I have tried lots of cases before courts without a jury and I have tried lots of cases before juries where I thought the jury didn't come to the right decision, but by and large, the minds of twelve men are better than the mind of one man always.

I spoke something to you about the persecutions that we have had against religions since the memory of man. The Crucifixion of Christ, of course, is always with us, but let's take the Romans and what they did to the Christians after the Crucifixion of Christ and before the Christian religion really sprang as a full-grown religion; once started consequently has swept the world and has been responsible for the progress of the human race.

Because those men were Christians, and as they believed the concurring heads of the Roman Empire did not believe, they were subject to all manner of cruelty. Nero used to take to his large dinner parties 20 or 30 Christians, put them on poles and cover them [841] with tar and set them on fire. They made a flaming row of torches for his guests to walk through. We found in the middle ages the same persecution of people for what they thought and believed.

Now, I am not condoning a religion like those of

the Aztecs in Mexico which believed in human sacrifices. There are limits, gentlemen. You can't throw a cloak over wrong-doing, over cruelty, and say: "This is the cloak of religion and so the priests are right and everyone else is wrong." I don't hold with any such belief at all. If I did, I wouldn't be a bit better than the old Puritans in New England who burned harmless old ladies because they thought they were witches. I wouldn't be any better than that board of magistrates in England that, when someone was suspected of being a witch, they threw them into the river, and if they sank they were innocent because the river would receive them; but if they floated they were guilty. The river would not receive them so they took them out and executed them. That is a fine way to test the verity of a religion. That is a fine way to administer justice.

Probably the most outstanding example of woman martyrs to religion is Joan of Arc; yet today she is a saint. Sometimes it takes the perspective of time to really show us where the truth lies, but in this enlightened day and age, gentlemen, there is no excuse for that, none at all.

Why, in the last century we find the migration from some of the eastern states to Utah of the Mormons. I have known a good many Mormons both here and around the Bay region. I found them to be pretty fine, respectable people. Yet they were compelled in the quest of their own religious freedom to uproot themselves from the communities in which they resided in the East.

We will take the Puritans in Massachusetts. They were searchers for religious freedom who were compelled to leave England and establish their own freedom here.

Now, because these people, not harming anybody that I can see, [842] chose to found a new movement, we are characterized and anathematized by the gentlemen of the prosecution as fakes and frauds and glib prevaricators. Those are harsh words to apply to a woman. I wouldn't do it myself. Because, and for no other reason, we speak of the supernatural, that we have a belief in the hereafter, we are to be damned with the mark of infamy and branded as felons. That is a fine concept of modern American jurisprudence.

What, after all, gentlemen, is the essence of religion? What is it? It is a belief in a hereafter. I don't know how many people would go through this life if in their hearts they felt the grave was the end of everything. Most people don't feel that way and even those that do hope they are wrong. Even old Robert Ingersoll, who was the greatest and most noted atheist and agnostic we have had in America that I know of, on the oration of his brother's grave said, "Sometimes we can hear the rustle of an angel's wing and see a light beyond the mountain that shuts us off." I haven't quoted it exactly, but that is in substance what he said. So that hope is deep in all of us, and so it was deep in these people. I don't care what you think, I

don't care whether you think my thoughts are fantastic or I think yours are fantastic, whether you think what I believe is improbable or unlikely, or I think what you believe is improbable or unlikely, we are entitled to those beliefs.

Now, a mail fraud case usually comes out to a pattern. The Government gets up and says, "These defendants intended to defraud A. B, C, D, E, F, and all those other people," and all those people are brought to the stand and they say, "Yes, I gave the defer lant my money and I didn't get anything for it. I believed what he told me at the time and now I know it is false, and that is how he defrauded me."

In this case you see the strangest thing that has ever been seen in a mail fraud case in the United States. You have seen a [843] veritable swarm of witnesses take that stand, men and women of good repute, of good standing in the community from which they come—doctors, business men, people in all walks of life—and tell you that they got nothing but good from the Ballard movement; that they believed in it; that they were happier and that they were better citizens. And you could tell it by looking at them. The eyes don't often deceive, not when the subject looked at is brought into the clear light of a courtroom.

If that is the kind of fraud that we have, to produce honest, respectable, responsible people like

that, then I think I will have to change my general understanding of fraud. The two don't go together.

As much as it has been derided by nations in times past, by ignorant people, by fools, by rogues and by those who didn't understand it, there has yet to be a greater book written than the Bible. I am not a Bible student, but I can remember a few things about it when I went to Sunday school when I was a boy on a farm. And I remember this: By their works ye shall know them. And those people that took the stand here are some of the works of this movement.

I know, gentlemen, that there must be working in the heart of every juror a thought, "Well, if these people weren't guilty, what is the powerful United States Government doing prosecuting them?" Abuse your mind of that thought. The Court will instruct you to do so, and you must.

A person never knows when he himself, innocent though he may be, may stand before the bar of justice and that black cloak of suspicion that settles upon him merely because he is a defendant, that is a hard thing to get away from. But you must get away from it. And I know that you will.

In every religion, in every religious movement, there are people who, for one reason or another, have dis-associated themselves from that movement. Whether they have had a change of viewpoint, [844] whether there has been internal dissension—after all, we are all human beings, and I don't care how religious they are, we are subject to the same frail-

ties, we are hurt by the same fire, angered by the same taunts, become disturbed by the same misunderstandings, so in every movement, as in every political party, as among the people in this audience, there is a divergence of views and the people who testified here for the Government, for the most part, are people who have had either personal quarrels with the defendants or, for some reason, have left the field. And now they come in to try and tell you that these are bad people, that these are criminals, that we shall stamp them with the name of common convicts and put them away in prisons to expiate their sins.

If you want to see what criminals look like, come over here some Monday morning when the criminal calendar is called, and the thieves and pickpockets and burglars and murderers are brought out, people who have been in one, two, three times or more, Get an idea of what a criminal looks like, and then contrast it with the appearance of the people whom I have the honor to represent.

Yes, we are guilty. We spoke of supernatural experiences, spoke of Saint Germain. What a simple thing! You look at a thousand other religions, a thousand other people who have their own beliefs in the supernatural. Is the Gideon Society that places the Bible in each hotel room in the United States guilty of a fraud because it disseminates a book that tells of the actual resurrection of Jesus Christ? Must be. You can't carry water on both shoulders. You can't make fish out of one and fowl out of another.

Why, this morning I picked up a little book. It is called "Unity." There is a church, maybe there are a lot of them here, Unity Churches. This book sells for 15 cents, and I notice that it was entered—if I can read that small print—way back in 1879 in the Post Office, so it has a permit to use the mails and go through as second-class mail matter. [845]

By way of illustration, we will look at it for a minute. Right on the inside front page: "Healing. My health springs forth speedily when I trust in Thee." Why, these people must be criminals, they ought to be, thinking that a person would have better health and feel better if he believed in God.

"Prosperity." Now, we are getting bad here. We are getting down into the realm of dollars. "Filling my mind with thoughts of Thy unfailing resources, makes me see and manifest prosperity." Is there any difference between that teaching and that of the teaching of this movement?

Where are you going to stop once you start prosecuting religious beliefs in ordinary, decent American citizens? Where are you going to draw the line? You might as well forget that we have any United States of America, you might as well forget it, because it will vanish just as surely as the sun vanishes when night comes. The difference is, there will not be any sun coming up in the morning if we do that.

What is a religious concept? What is the basis of it? One of the bases is, if we do good here in life

we are entitled to a better life hereafter. No one can say that the lives that we live are perfect. They are filled with hardship, they are filled with sorrow, they are filled with grief and disappointment, pain, agony, sickness, distress, want. Who wants to consider that the benefits in this life are all they are that makes a life worth living? If you don't give human beings some hope based upon some reason, if I thought myself that there was nothing beyond except what I do from day to day then die and be blotted out into the blackness forever, that is not a concept upon which righteous or good human conduct can endure, gentlemen.

I started to tell you about some of the things that are recognized as having been supernatural in history, but I think the one illustration of Christ will be sufficient. It doesn't serve [846] any useful purpose to go on with that. If you will just kindly bear in mind that you are trying a criminal case, you are not trying these people for having the right to believe in what they believe or to teach what they teach. This is a case where you are either going to say that these people are not guilty or that they are guilty and they are convicts and they ought to be punished and put away in the penitentiary. I don't think, gentlemen, that you are going to come to that conclusion. I can see no sound basis upon which you can come to it.

You may not like the way that certain defendants testified on the witness stand. Gentlemen, I hope that none of you ever have the experience of having

to get up on a witness stand where you are a defendant in a criminal case. It is one of the most trying ordeals in the world. I even dislike being a witness in an ordinary case, and I make a miserable witness, and here these people are with their liberty at stake. You cannot lie back like you had a little series of rat traps and every time a slip was made—"Ah, ha, we got you that time. Caught you now. Didn't tell the truth. You are a liar. Liars."

This is a great world, gentlemen, and we had a great man once by the name of Emerson. Many people didn't believe in what Emerson believed. But he did write one essay that was very good. It was called "The Law of Compensation." I don't know whether any of you have read it. I hope you have. In the end we generally get paid for the things that we do, good or bad, and generally there is a reward for the things that we do that are good. Bear that in mind.

It is unfortunate, doubly, trebly, a thousand times unfortunate, that the founder of this movement is not here before you. He is not in this life. Whether you believe that he ascended or whether you believe that he did not is of no particular moment. He was the founder of the movement. He is not here. You have heard from [847] those who have followed him and believed in him. I wish it had been possible for him to have been here.

It is a matter of no moment to this case as to whether Mr. Ballard ascended or went into the hereafter, as these people believe and think, or

whether he didn't. The question is whether they believed it in good faith. That is all. It is a question of good faith. It is a question of whether there was an intent to commit a felony by violating the laws of the United States through using the mails.

We are supposed to have taken in millions of dollars. Why, when Brother Lazarus talked I could almost hear those $20 gold pieces tinkle. The books of account of the Ballards were the books of account of two corporations. Corporate books of account are open to the Government at any time they see fit to subpena them. The Government has had those books of account in their possession. If this is the gigantic commercial fraud with which we are accused where, I ask you, is the testimony that could have been brought before you that these books of account would then have revealed?

The Government, gentlemen, has a long arm and it doesn't hesitate to reach out after you or after anything that you have that will aid it in the prosecution of what it believes to be a crime. And you can rest assured that if those books showed any such thing as they contend for, you would have had them here and one or two accountants to testify in detail about them. And don't you ever think you wouldn't. You are business men and you know what I am talking about.

If I go down here and I am employed in the First National Bank as a cashier, and I embezzled over a year's time $10,000, and I am brought up here for trial, don't you think the bank examiner would be

here with those books to show where I got away with that money? Don't you think so for a minute. And don't you [848] think for one second that if the Government had been able to substantiate this as a commercial fraud that it wouldn't have done it. And the resources at the command of the Government are unlimited, and growing more so every day as we become more and more centralized.

The great fraud! The great I Am fraud! These commercial defendants—Betty Mundy, Bill Cassiere Paul Stickell, Donald, Mrs. Ballard, Louise Majerus —the great sextet of criminals which we have plucked up from the dismal bottom of the sea of crime. Indeed, gentlemen, they are very, very desperate criminals.

It is rather difficult to find words just to express that thought. A case of this kind is kind of a borderline case. In my opinion, it is going to mark a new step if these people are convicted. I don't like the necessity of centralization of the Government that the war is bringing, but if it is going to bring that kind of integration, that kind of centralization, that kind of autonomy, that kind of stifling of the rights of liberty and the rights of the individual that we have in the totalitarian powers, I don't know, gentlemen. It doesn't leave me with a very happy thought about the future of our country.

I don't know whether I have conveyed to you what seems to me to be the essence of this case.

I hope that I have. I have tried to. I will see if I can sum it up for you again.

Let's put it as a trial of the right of private liberty, of private conscience, of private religion; the right to believe and to think and to tell others and to try to get others to follow us.

We haven't seen among any of the followers or beliefs in this movement anyone that I have noticed that didn't appear to me to be a kind of a credit to the community in which he resided. They are law-abiding, they teach the elements of morality, they don't sanction anything that is wrong, and yet you have them in here because, forsooth, their magazines went through the mails.

You heard from one of the men who was accused of this crime [849] before and acquitted, Charles Sindelar. Mr. Sindelar took that witness stand. He is a painter. You will remember, gentlemen, the artist. Apparently he is a man of international repute and fame. He told you about the vision that he had when he made the painting. Well, lots of people in the world, gentlemen, have had visions. They have not gone to prison or to the stake or gallows for it. Lots of them have, but I hope to heaven that we have gotten over that kind of way of treating people in what is supposed to be enlightened America.

There is a danger from within here in America, just the same as there is a danger from without. There is a danger in times of stress and peril that we may get away from the common bases of com-

mon sense and common justice that dwelt in the hearts of our fathers that founded this country, that founded it upon a rock of freedom and not upon the bars of a prison.

I cannot think, gentlemen, that you will let yourselves come to the conclusion that these people are criminals, and that is what you will brand them with if you convict them—common, as Brother Lazarus says, cheats and frauds. And how those words rolled off his tongue—cheats and frauds.

I think they are honorable people, and I don't care whether I believe or someone else believes what they believe or not. After all, we are living in America, and I say to you, gentlemen, and I say it from my heart, and I am not going to say any more—they have got a right to believe, to worship, to think, and if they will, to get others, if they can do so, by peaceful means to think with them.

Just a little word about this commercialism, and then I am going to stop, because it is something to advert to because if you can tie real commercialism into a fraud case, then I say maybe there is a good deal in what the Government says. Witness after witness took the stand and told you that they never asked for [850] anything. What church does one go into where one isn't supposed to make some sort of a contribution for the parson? How is he going to live? Good heavens, they had to eat, they had to sleep, if they traveled about they had to have hotel rooms, they had to have transportation, they weren't endowed. Nobody reached into the pocket

of the people in the congregation and abstracted a dollar or 50 cents or something of that sort. This money came in voluntarily. You have heard the people tell you about it.

No gentlemen, I don't think they warrant a conviction in this case. I want to thank you for your attention, too. You have listened carefully, and I have tried, as I told you, to be brief and yet cover the essential points of the case. If you will only remember to do as you said you would when you were examined as jurors to keep in that frame of mind that you would want a jury to be in if they were judging you when you were a defendant, I will be satisfied. I won't have any complaint to make, none at all, if you do that; and I want to thank you for listening so attentively. [851]

ARGUMENT IN BEHALF OF THE DEFENDANTS

(Continued)

Mr. Gilbert: May it please the Court, gentlemen for the prosecution, and gentlemen of the jury: I was a little disappointed yesterday when Mr. Lazarus was passing out the compliments that somebody from my office wasn't here to hear him, because there are a few of them down there that haven't heard yet I am supposed to be the head man. It might be time for them to be finding it out; at least I would like them to know it.

Mr. Lazarus told you yesterday that the defense in this case would claim this to be a religious

prosecution. What we propose to do is to rely and call your attention, as Mr. Peterson has already done in part, to the Constitution of the United States, to the words of the Court that have already been given to you as partial instructions in the case, to the incidents of history both religious and non-religious, and to incidents in the Bible; all for the purpose of trying to demonstrate to you but not to try and compare any religion or any events with this religion, but for the purpose of complying with the instruction the Court has given you that this cannot be a heresy trial and merely try to demonstrate to you that the things that are taught in this activity and the things that are believed in this activity are things that are subject to belief by many people, reasonable people, and intelligent people and that, if those things that are taught here can be believed by those millions of people who have believed them and who believe them, to then submit to you the proposition that that being true, what is there there and why is it that these people cannot also sincerely and in good faith believe those same things.

Now, preliminarily I should like to give you four instructions that I think the Court will give you later. Of course, whenever an attorney says that he thinks the Court will give you an instruction [852] on so-and-so, and if the Court later does not do so, naturally you will disregard anything that has been said in that connection. The instructions are submitted to the Court for his approval

and they may or may not be given. So any references made to instructions, with the exception of one I propose to read to you that has already been given, are made in anticipation only.

There is one instruction with which you are all familiar and you have heard it all your lives, and it is the instruction that relates to the presumption of innocence on the part of all of these defendants. That is an instruction that goes with you to the jury room and it is an instruction that must not and should not be forgotten by you at any time in your deliberations, and it should be taken by you in connection with the next one, the instruction that the burden of proof in this case is upon the Government. You have heard that same instruction many, many times before, but when you bear those two instructions together, that the defendants are presumed to be innocent and that the burden of proof in this case, not by a mere tipping of the scales, not by a mere preponderance of evidence, but beyond a reasonable doubt, rests upon the Government. I want you to recall that Mr. Cannon told you in his opening address that we were going to stand pat upon those instructions and that we were here to meet issues and not create them. Bear those in mind when you recall in your deliberations Mr. Lazarus' remark about why didn't the defendants prove certain things. That is not our job. The job of proving these things is on the Government.

There is a third and very important instruction which we anticipate will be given and it is to the

effect that in this case you will be required to exclude all possible theories of innocence before you may find these defendants guilty, and if there is any reasonable hypothesis upon which you may find these defendants innocent, then you must do so; if there is a reasonable doubt as to [853] whether or not these defendants are innocent, then in that event you must also find them not guilty.

The fourth instruction that I desire to state to you preliminarily is one that has been given to you by the Court following a discussion of counsel. After you came back into court, it was read to you; that is, the discussion between the Court and counsel, was read to you at length by the judge and this instruction sets forth the fundamental basis of this lawsuit.

Following the discussion the Court addressed you as follows (this was during an interruption in the testimony of Mrs. Margaret Schall, and when you came back to the court-room the Court addressed you):

> "Gentlemen of the jury, yesterday when you were dismissed, arguments were made by counsel on both sides with reference to evidence in the case. The arguments of counsel on particular points raised are not necessarily the comment that I am about to make.
>
> "At the conclusion of the arguments, the Court defined the issues in this case, and it was the request of counsel for both sides, the

Government and the defendants, that the statement be read to the jury which might enable you to direct your minds to the issue in the case and eliminate probably some matters from the evidence that might be confusing. So with that preliminary statement I will read what I said to the attorneys yesterday.

"'Now, gentlemen, here is the issue in this case:

"'First, the defendants in this case made certain representations of belief in a divinity and in a supernatural power. Some of the teachings of the defendants, representations, might seem extremely [854] improbable to a great many people, for instance, the appearance of Jesus to dictate some of the works that we have had introduced in evidence, as testified to here at the opening transcription, or shaking hands with Jesus, to some people that might seem highly improbable.

"'I point that out as one of the many statements.

"'Whether that is true or not is not the concern of this Court and is not the concern of the jury—and they are going to be so told in their instructions. As far as this Court sees the issue, it is immaterial what these defendants preached or wrote or taught in their classes. They are not going to be permitted to speculate on the actuality of the happening of those incidents. Now, I think I have made that

as clear as I can. Therefore, the religious beliefs of these defendants cannot be an issue in this court.

" 'The issue is: Did these defendants honestly and in good faith believe those things? If they did, they should be acquitted. I cannot make it any clearer than that.

" 'If these defendants did not believe those things, they did not believe that Jesus came down and dictated, or that Saint Germain came down and dictated, did not believe the things that they wrote, the things that they preached, but used the mail for the purpose of getting money, the jury should find them guilty.

" 'Therefore, gentlemen, religion cannot come into this case. I want to assure Judge Armstrong [855] and the defendants and the Government that it will not be permitted to come in.

" 'Now, we take up the third point, so there is going to be no misunderstanding so far as the Court is concerned.

" 'No attack can be made, therefore, on whether or not these things happened, but when you have a program or you have certain representations set out, you have got to show what they were. And the defendants, I assume from counsel and counsels' statements with reference to the books and pamphlets have not so far withdrawn a single word of what they have written or what they have preached. The de-

fendants, so far as I can gather it from the case, although they haven't started to put it in, are standing on the whole—not program—but the whole conception (I think that is a better word)— the whole conception of their relationship with the deity or, as it is used here, with the I Am Presence.

"'Now, gentlemen, that is going to be made so clear to this jury that they are not going to misunderstand it. And that is the whole case'."

So we start out with the fundamental proposition that the actualities, the events, the verity of the happening of the events, is not to be the subject of any deliberation by this jury. It is not a question of whether or not these things happened or didn't happen. It is merely a question of whether or not these people in good faith sincerely believed that they did happen. You may not in your deliberations, for example, assume that Jesus did not shake hands with the people or place His arms around Mrs. Ballard. And therefore, in view of that last instruction, the instruction that stated what the issue is, my discussion is going to be confined [856] almost entirely to the question of the good faith and the sincerity of the defendants as revealed by the Government witnesses themselves; and to try and demonstrate to you, not only from these other historical events, but from the Government's own witnesses, reasonable intelligent people, that these things are the subject

of belief by them; and to leave with you finally, as indicated before, that if these things are the subject of belief by reasonable people, then you cannot, we will submit, find us insincere and in bad faith.

Now, I listened yesterday to Mr. Lazarus to find out one thing in particular and that was whether or not he would tell us even approximately the date when this fraud started. He hasn't done it. I know the Government is going to say they don't have to prove the exact date on which the scheme was born—I know that—but as a matter of proving a fact to you that the scheme was born, doesn't it seem apparent that somewhere along the line there would be some evidence of the date, within at least approximate areas, when the scheme was born and the fraud started. We think the evidence, the documentary evidence as it goes along, the statements of these witnesses will prove to you that there never was, and the reason that the Government didn't try to point it out is because there never was a fraud nor there never was any scheme as they describe it, a scheme to sell books.

The testimony in the lawsuit begins with the year 1930 at two different places: One was Mrs. Bliss' meeting Mrs. Ballard in Chicago in 1930 and the other is with Mr. Ballard in California at Mount Shasta. Mr. Lazarus started off at the beginning and told you right at the start Mr. Ballard did not come to California and was not in California on Government business. Mr. Ballard's lips are sealed as far as our ears are concerned, but it occurred to me that if anybody would know who his employee

was or wasn't, it would certainly be the employer, and if the Government in this case does claim that he did not work for them, the proof is available to them. [857] They will say perhaps that that was a long time ago, but Mrs. Bliss goes back quite a long time, back to 1930. They found Wilbur Curtis Smith way down in Florida back in 1935. The Government cannot shift the burden of proof, and it is those things, in connection with those things that we gave you those instructions of the burden of proof and the presumption of innocence in favor of these defendants.

Now, at Mount Shasta Mr. Ballard wrote some letters to Mrs. Ballard. They are in evidence as Government's Exhibit 203. I have copies here, not the originals. These letters are private correspondence between husband and wife. They are not written for any publication at all. They are written simply between each other, and they are to my mind with one exception the clearest proof in this case to you gentlemen that there were no bad thoughts, no evil intent, and no scheme in the minds of either Mr. or Mrs. Ballard at the time these books were written, or thereafter. The one exception is a letter we will bring to you later which was a private communication from Mrs. Ballard. She thought it was a private communication, at least, from Mrs. Ballard to her son Donald.

Incidentally, the Government now makes no contention that Mr. Ballard was not in Shasta at the time stated in the books and at the time these letters were written from Shasta.

He addresses his wife "Beloved Meta, Blessed Angel of Light"—this is one of the letters that apparently—it is an undated one, it is not dated on the letter itself—but it was written early, and in that letter he refers to the "Unveiled Mysteries." He states in that letter:

> "His highness says that when the first book begins to get into circulation I will be wise to change from here for immediately people will begin to come here quietly to try to find out who Ray is, knowing it was written [858] in this locality, but he said that should not be changed."

Now, gentlemen, if there was a scheme in Mr. Ballard's mind at that time to attract people to him, would he be writing to his wife that he would move away from the place that people would come to him? That isn't the workings of the mind of a man who was commencing and setting out on an enormous scheme to defraud people of their money, is it?

He addressed Mrs. Ballard on September 4, 1930:

> "Those blessed master books"—apparently he is referring there to other books that he had been reading and which are mentioned in the correspondence—"Those beloved master books everything is surely in them and the inner secret. Gee, how like mine was his experience. Yet notice how he says the great

low vindicated him. It is wonderful. This morning your three letters of the 31st, 1st and 2nd came with the magazine. What blessed letters. Thank you, love."

Then it continues on.

But Mr. Ballard, in September 4, 1930, is writing to his wife about the inner secret. He is writing about experiences that someone else has had in the inner secrets and remarking to his wife, in private correespondence before the publication of any books and clearly with no evil intent in his mind, of the experiences that he has been having at Mount Shasta.

Again he addressed from Weed, California, one of the other letters. He was talking about the cabins and their future together.

"You can be sure in the invisible it is all worked out now."

Skipping a little: [859]

"Well, our life and affairs are now under perfect divine order. So be it."

He referred in another Shasta letter, the one dated 8-11-30, at the concluding paragraph:

"It is so ridiculous to think the Almighty God in us cannot do instantly whatever we desire to do that is good. It is all a matter of concentration and stillness. Worlds of love and blessings to the two most precious ones. Your adoring Ray."

Those letters, gentlemen, if you will take them and analyze them—there is one more comment on this letter of 5-3-30, in which he wrote again to his wife:

> "I may possibly know far more of what has gone on there of the tremendous experiences you have gone through there for me and our precious boy never thinking of your precious self. That is why at one time I almost went mad, dear precious heart. I know you have only told me a small part of what has gone on there, but that I have been a channel of strength and healing to you has sustained my reason."

That is the inner thought and the inner belief and the inner conviction of Mr. Ballard in his own mind back in 1930, and you may rest assured that it wasn't something that came to him overnight, a process of working out over a period of years, and to his wife in the private communication at that time, not made for purposes of publication, not made for purposes of trying to draw anybody into the necessity of a scheme for money, he tells her that he feels that he has been a channel of strength and healing to her. That is his personal belief, evidenced at a time before any notion of any criminal prosecution could possibly [860] have ever occurred to anybody.

Now, the Government's witnesses have all testified, and the defendants' witnesses as well, that

they believed what was written in "Unveiled Mysteries," and Mr. Neukom has read to you certain sequences out of the "The Magic Presence" to show that Mr. Ballard couldn't have made—he will contend possibly that he couldn't physically have made—the trip set out in those parts that he read.

Well, what did Mr. Ballard teach these people in "Unveiled Mysteries"? What did they believe? In the foreword Mr. Ballard said:

> "To those who read this work, I wish to say, that these experiences are as real and true as mankind's existence on this earth today, and that they all occurred during August, September, and October of 1930, upon Mount Shasta * * * "

Mr. Lazarus pointed out to you yesterday a date in this book beyond October of 1930. What was Mr. Ballard stating to these people had happened at Mount Shasta? Mrs. Ballard told you, and this is the belief of the people, and this is what is written in the book, and it is what the people believed, not that Mr. Ballard had these experiences in the physical body, but that Mr. Ballard had these experiences, as Mrs. Ballard calls it, in the inner levels, and that is what is stated clearly and unmistakably in the books. There is no representation at any time that Mr. Ballard had these experiences in what they called the outer world or in his physical body.

On page 15—this is under the chapter "Meeting the Masters"—it is stated:

> " * * * While I have always been in touch with you, when we were both in our finer bodies your [861] conscious effort of reaching out to some one of the Ascended Masters opened the way for me to come to you in a much more tangible way, that is, tangible to your physical senses."

Dropping down:

> " 'This,' he explained, 'is the body in which I work a great deal of the time, when occupied with the welfare of manking * * *"

Then on page 16:

> " 'Oh!' I exclaimed, 'now, I know you for I have seen you many times like that, at the Inner levels of consciousness'."

And then the experience, the first experience that is in the book relating to Mr. Ballard leaving and traveling with Saint Germain, commences on page 18, where Mr. Ballard says:

> " * * * I stood outside my physical body, seeing it clearly as it reposed upon the ground. I wondered if it would be safe there on the mountainside, and in answer to my thought, Saint Germain replied:
>
> " 'Do not be disturbed. Not a thing in the world can harm your body while we are away. Observe!'
>
> "Instantly, I saw it surrounded by a White

Flame, forming a circle about fifty feet in diameter."

And on page 23 another experience:

"'Notice!' he reminded me, 'you are experiencing these activities in your finer body, but they are none the less real because of that, for your physical body is only a garment which you, the Self-Conscious, thinking, and experiencing individual, wear'."

Again on p. 27, when they returned: [862]

"'Watch the circle of White Flame disappear!.' I looked. It vanished."

And as the various chapters begin in "Unveiled Mysteries," each time that is made self-evident, and I want to read each of them to you so there can be no mistake when these people told you what they believed, the witnesses for the Government, just exactly what Mr. Ballard set out in the book and what they believed and what they told you and what they did believe.

On page 74, in another chapter, "The Royal Teton":

"Instantly, I stood out in my finer body, clothed in a rich garment of self-luminous, golden fabric."

On page 110—this is Saint Germain talking:

"'I have come to take you on an important journey. We will be gone thirty-six hours. Draw the curtains to your room, lock the doors, and leave your body in bed. It will be guarded

until our return. You have made certain Inner advancement, and a very interesting, delightful experience and journey are ahead of you.'

"I prepared my body for bed and soon became very still. A moment later, I stood upon the floor outside of my body clothed in the same golden garment I had worn on my visit to the Royal Teton. * * *"

Again on page 126:

"On the evening of the eleventh day while retiring, I heard his voice say distinctly:

"'Come!' I had learned to obey that call and immediately stood outside of my body, passed quickly through space and in a few moments came to the Royal Teton. * * *"

On page 164, starting the chapter on "Buried Cities of the Amazon":

"I touched the beautiful, wonderful fabric [863] and was so fascinated that I stepped forth from my physical body, and was unaware of it, until I turned and saw it lying in bed."

And the last one in this book is on page 243, a new chapter, Chapter 9:

"I spent the remainder of the day in deep meditation. He arrived at seven o'clock and as I had already placed my physical body in bed I stepped forth in the one he had prepared for me."

Well, that, gentlemen, leaves it very clear what was being stated in "Unveiled Mysteries," and what

Mr. Ballard represented was not that he had made these excursions in the physical body, but that they were experiences of his on the inner plane, and that they were as real, as advance and as luminous and tangible as events that happened to people in the outer or physical world.

"The Magic Presence" carries the same thing. I am not going to read anything here, except the statement that in "The Magic Presence," which was the second book:

> "My experiences were the results of applying the knowledge he had previously revealed."

So that the same thing carries forward into "The Magic Presence," and while Mr. Neukom read you from different pages in this book as to where Mr. Ballard was supposed to be at different times, and told you, if I remember correctly, in his opening statement that he was going to prove that Mr. Ballard was physically at places where the books would show that he couldn't possibly have been, that is the explanation, and what these people believed, that there never had been a representation that Mr. Ballard had physically been there, but even under Mr. Neukom's theory of a physical trip, let me direct your attention—Mr. Neukom read from "The Magic Presence", and he left off reading at a point where we were to remain there for [864] months. I have forgotten the exact page of it, but he was trying to leave you with the impression that Mr. Ballard was to remain at that place for many months and

hence couldn't have returned for the reception of the dictations over the ray in Chicago. Even under his own theory, Mr. Neukom, I think should have read you this on page 390 of "The Magic Presence":

> "'Now your real service will begin. All but this Brother,' indicating me, 'are to remain here in the Palace of Light for one year.'"

So it was very apparent, even under the Government's reading, that Mr. Ballard, under their theory, wasn't to remain there, as Mr. Neukom endeavored to leave the impression by not reading the entire story to you.

Your Honor, I was going to start off on something else.

The Court: Gentlemen of the jury, we will take our usual morning recess of 10 minutes.

You will remember the admonition I have heretofore given you.

(At this point a short recess was taken, after which proceedings were resumed, as follows:)

The Court: Stipulate the jury are present, gentlemen?

Mr. Cannon: So stipulated.

Mr. Neukom: So stipulated.

The Court: Stipulate the defendants are in court?

Mr. Cannon: So stipulated.

Mr. Neukom: So stipulated.

The Court: Proceed, Mr. Gilbert.

Mr. Gilbert: Gentlemen, the record doesn't have much in it as to what occurred between the period of 1930 that we have just been talking about, and 1934, except that Mrs. Bliss was attending classes that Mrs. Ballard was having in her home and which we will come to with Mrs. Bliss' testimony.

Now, Mr. Harry Sieber and the gentleman who had to do with the [865] so-called business end of the activity are the ones that I will discuss first. Mr. Harry Sieber, you will recall, came on the scene in 1934, and was with the activity in October, November, December and part of January 1935. The occasion of Mr. Sieber's trip to Chicago to see Mr. Ballard is, I think, very important and revealing. He stated that prior to that trip he had read the "Unveiled Mysteries." Up to that time he had not contacted or had not seen or talked to the Ballards.

You will recall that a number of Government witnesses testified. One I recall offhand is Mrs. Schall, who testified that she had read the "Unveiled Mysteries" and "The Magic Presence," which she read in the Congressional Library in Washington before she attended any of the classes or contacted the Ballards. Many of the defendant witnesses were asked what their first contact with the activity was and many of them replied their first contact was the reading of the books.

Mr. Sieber testified that he had read the "Unveiled Mysteries" and upon that reading thought that the book contained things that the people

ought to have and that he wanted to help in getting it before the people. Well, now, surely if just reading the book before he contacted the Ballards in any way at all, he couldn't have been under their control or under their domination or, as Mr. Lazarus describes it, hypnotized by them. This book "Unveiled Mysteries" and "The Magic Presence" was read before they contacted the Ballards. The books appealed to these people upon their own merit and not by reason of any persuasion or any hypnotism or any dominion or control that any of these defendants had.

Mr. Sieber came back and attended with nine other people a class that the Ballards were holding, and out of that meeting, as he testified, the groups started. Up to that time there had been no grpups in the sense that we came to know them later on. There had only been the meetings that Mrs. Bliss had attended and which [866] you will recall Mrs. Bliss said the people had to be invited and passed upon. On that particular point, in covering the period there from 1930 to 1934, we again find a little revealing bit of testimony that there was still no scheme and still no evil intent in the minds of these parties, for surely anybody who has a scheme or evil intent in his mind to take money away from people doesn't insist on people staying away. He doesn't insist that they shall be passed upon and only those should be admitted who are invited to come to the classes.

After Mr. Sieber attended that class he later came back again with his son, and after that sent his wife to listen to the Ballards, and then offered his help. Now, these things are occurring some time around in July of 1934. He testified that it was several months before the matter of selling books was even discussed between himself and Mr. Ballard, and that Mr. Sieber was the one who suggested that these people ought to go out to other cities and give the people the benefit of these teachings because, as Mr. Sieber said, he thought that it was something that humanity ought to have.

He then returned to his home and the correspondence to which I will direct your attention in part in a minute passed between him and Mr. Ballard. Mr. Sieber testified that it was he who suggested the manner of taking up the love gifts. That came on later. I know he also testified otherwise, but on page 356 and on page 377 of the transcript he testified that he suggested the taking up of the love gifts and the method of receiving the love gifts.

When Mr. Sieber started to take charge of the selling of the books and the management of going from city to city, he asked the Ballards for a list of their students and they didn't have one. Isn't that an indication again that there was no evil intent, no scheme in their minds? Isn't it usual and ordinary that people [867] who are setting out with a scheme to defraud people to keep a list of those that they feel they can prey upon? But no

such list in this case appeared and Mr. Sieber was the only one who ever had a list. That wasn't really a list. He sent some envelopes to Mr. Curtis to be addressed and testified that outside of that occasion there were never any lists while he was with the activity and none kept later, never any lists kept of the students.

Now, in Government's Exhibit 70, which was the letter of September 27, 1934, from Mr. Ballard to Mr. Sieber in response to a letter that he had written them asking certain questions, Mr. Ballard said:

> "I deem it imperative to keep the activity that has started here continuing, and you can relieve us of all the details of the distributing through your channel. It would help us and simplify matters for all."

Now, if this were a book selling scheme, as the Government tells you it was, does it seem reasonable to suppose that they are going to turn the most important part of their scheme, if it was a scheme, over to somebody else, someone who is a comparative stranger? This letter was written in September of 1934. They had never known Mr. Sieber before. The first contact with him was in July. If there was a scheme in their minds, do you think they would turn the most important part of their scheme over to somebody they didn't even know?

In that same letter Mr. Ballard says:

> "You should have access to the letters and comments in our files, and our files here are

full of them and you are welcome to know all that has occurred."

Does a man who has an evil intent or scheme to defraud people offer to turn his whole files over to a stranger to let them go [868] through the files? Why, of course, no such thing ever occurred to anybody who had any such intent.

Mr. Sieber testified that he kept as careful a count of the receipts and he made a record of it, and some of those records have been here in court. Is that the activity of people who are involved in a scheme to defraud? You gentlemen know that people who are involved in a scheme do exactly the opposite. They don't keep their records, or if they keep them, they try to mix them up.

We will show later—I will direct your attention to a very minute thing that hasn't much importance except to show that they did keep records of the most minute details, a simple record only for permission of Donald Ballard to drive the automobiles of the Saint Germain Foundation. Even such small things as that, a clear and complete and accurate record was made for the Government and I think they have seen it. When Mr. Lazarus was questioning Mr. Donald Ballard about his cars, I think that is where Mr. Lazarus got the notion, because a record of the minutest detail was made by these people, of all of their activities, and their conduct, and that is not the way people who have a scheme

in mind conduct their affairs and keep their books.

In Exhibit 78, which is a letter that was written on February 12, 1935, Mr. Ballard wrote to Mr. Sieber that Mrs. Ballard was having a throat disturbance. I mentioned that at this time to tie it in a little later, to point out to you that at no time, even publicly, have these people claimed they were perfect beings or that they were not subject to these ailments.

Mr. Wilbur Curtis Smith from Florida testified that he saw Mrs. Ballard taking cough drops right out in front of the audience. No endeavor was made whatsoever to hide or conceal the fact.

Now, Mr. Sieber testified that while he was with the work he thought it was a good proposition for humanity and believed it would help people. Now, Mr. Sieber had been the president of a [869] trust company. His business was that of an accountant. I think you must assume that during the time he contacted the Ballards—we know he read the "Unveiled Mysteries"; he said so—but you must assume that he was familiar with the teachings. He attended the classes. Mr. Sieber in that position in life and with his experience and his knowledge of the affairs of life found those things that he was taught to be believable and sincerely so.

Max Gysi next took over. That was when Mr. Sieber was injured. Mr. Max Gysi was with the activity from 1935 to November of 1935, had met the Ballards in the Boston class in November of 1934. You will recall he testified *that he testified*

that he attended the Boston class and the New York classes and was down in the class in Washington, D. C., when Mr. and Mrs. Ballard, by reason of Mr. Sieber's accident, asked Mr. Gysi if he would help them out, and he immediately said that he would. Now, Mr. Gysi had attended the classes and Mr. Gysi was undoubtedly familiar with what they were teaching. He was undoubtedly familiar with their beliefs and what they though. He was familiar with their personalities and their sincerity and their good faith. Mr. Gysi had been a banker all his life, all over the world in different places, in London, Switzerland, and around in Europe and the United States. Mr. Gysi testified that when they went down to Florida he had a conversation with Mrs. Ballard in which he directed her attention to the fact that they had received pre-subscriptions for "The Magic Presence" and that he impressed upon here that they were honor bound to produce it.

Now if Mr. Gysi had that conversation with Mrs. Ballard in which he sought to impress her that they were honor bound to produce "The Magic Presence," she must in some wise have been hesitant about it or have expressed some doubt about the production of "The Magic Presence"; otherwise Mr. Gysi would not have had to convince her that it ought to be done in all honor; and if this was [870] a book selling scheme, doesn't it seem that there should have been no doubt or hesitancy on the part of anybody to produce the books. Yet

we have it here from Mr. Gysi himself that there obviously must have been such a doubt or he wouldn't have mentioned to Mrs. Ballard that she was honor bound to produce it, and which she then said she would get it out as soon as possible.

Mr. Gysi testified that he was the one who suggested how the words the Mighty I Am Presence should be printed.

Now bear in mind that Mr. Gysi didn't come into this activity until January of 1935. That testimony was elicted by the Government in an endeavor to lay a foundation, I think that the phrase "The Mighty I Am Presence" was not even a thought of the Ballards, but it was merely something that had been suggested to them by somebody else. Yet in the Killen letters—they are known by that name; I have forgotten the exhibit number—the Killen letters that were written in 1933, in about three occasions in those letters that identical phrasing is used just exactly as it is found in the books.

Mr. Gysi testified that he arranged for the ports of call as set out in "The Magic Presence". That testimony was elicited, I assume, on the theory that this was a physical trip, which we have seen that it didn't even purport to be.

But even so, Mr. Gysi testified that the ports of call that he arranged were those that must, of necessity, have been visited in a certain order, and even if it be a physical trip, the book specifies clear that it was taken in a private yacht. Gentlemen, a trip on a private yacht, the person in charge of

that boat isn't required to go to any port. They can go to any port they want to.

Of course, Mr. Gysi, I think, should be excused in his testimony in that regard. He hadn't read the books. He testified that he had read about 111 pages of the "Unveiled Mysteries" manuscript and that he hadn't read "The Magic Presence" at all [871] until a little while before he testified, and then he only read a few pages of it.

But even so he recounted a conversation in which he pointed out to the Ballards that the pillars of this subterranean palace were projecting 70 feet above the ground. He testified to that without regard and without any information as just to how far down was the foundation, whether they had gone downward into the subterranean palace—without any regard to the pitch of the road they were going down, or how long they had gone down, or the speed downward at which they had travelled—and thus without knowing the starting point and the bottom he was able to tell, he claims, how high above the ground certain pillars protruded.

But Mr. Gysi testified that from the beginning he believed in the Ballards' sincerity and that he told various students that he had, while on tour, seen corroborative evidence and experienced the corroborative truth of the I Am teachings.

Now Mr. Gysi with his experience, with his power of analysis, with his association with the Ballards, must have become fairly well acquainted

with them. He must, in his daily contacts with them, had sufficient basis upon which to form an opinion as to their sincerity, as to their beliefs, and he not only testified from the witness stand as to his own beliefs in it, but he testified that he went about and told the different students that he not only had seen the corroborative evidence but that he had experienced it himself.

Mr. Harry Rogers was the next that had to do with that end of the acivity, and he had met the Ballards in April or May of 1935. He became their announcer and performed in that capacity until about July of 1939. Mr. Rogers testified with reference to certain telegrams that were received in San Francisco, and that he had called those to Mrs. Ballard's attention and she told him to do the usual thing. [872]

Now the Government apparently brought that testimony out in an endeavor to indicate that this was something that *this was something that* the Ballards didn't do themselves, but you will recall the testimony of Mrs. Ballard that she had performed these things every morning, and that also Mr. Crouse testified to the letters that would come in telling the Ballards that they had received—the sender of the letter had received the benefits requested in a previous letter before a reply had even been received.

This function was the function that all of the members of the staff, or at least part of them, were supposed to perform, that when these requests

came in as Mr. Rogers said he did, that they were to go to their rooms, as Mr. Crouse later testified he did, and to call on their own I Am Presence and to the presence of those who requested the help, so that it wasn't only the Ballards who were assisting in granting these requests, but it was the members of the staff as well.

Mrs. Meyer, incidentally, who said that she was present at that conversation, disagreed a little bit with Mr. Rogers. She testified that Mrs. Ballard had told him to say the usual thing. Mr. Rogers testified that he was told to do the usual thing, and that when told that he returned to his room and called to God to project the healing ray.

Mr. Rogers was paid no salary, but he did receive his love gifts and his expenses. And while he was with the activity from the latter part of 1936 until in 1939, and with his close contact with these people and his ability and his opportunity to observe exactly what was going on, Mr. Rogers testified that the money realized was devoted to the continuation of the movement. That is the observation of a man who, as Mr. Lazarus described it, was on the inside.

Now Mr. Rogers also identified the so-called Shippey letter. That letter is Exhibit H, and it was a letter that Mr. Rogers used, [873] as he said, in the announcement.

I would like to read it to you in its entirety. It is a letter written to The Times, to Mr. Lee Shippey of The Times, by somebody who had gone out to these classes and had written to Mr. Shippey

of his reaction to it. The letter is dated November 25, 1938.

"Mr. Lee Shippey
"The Times
"Los Angeles, California.

"Dear Sir:

"When men and women fill the Shrine Auditorium twice daily for ten days, as they did during the period from December 23rd to January 2nd, to listen to a man and woman expound a Law of Life,

"When the desire for seats is so great that the huge auditorium seating some 7,000 people is practically filled an hour before the lectures start,

"When this experience is duplicated in major cities throughout the United States as it has been in San Francisco, Seattle, Cleveland, Detroit, New York, Boston, Washington, D. C., and other cities,

"When nearly three hundred thousand people throughout our land are followers of this teaching which is affecting their lives and that of the nation,

"When these audiences are made up of people who are intelligent, dignified, happy, well-groomed, well-dressed, well-mannered, and from all walks of life,

"When this activity is carried on with no advertising, no publicity, no ballyhoo, no dramatics, no spectacular bids for attention, [874]

"When no money is colicited, no schemes are promoted, no politics indulged in, and no propaganda is offered against any individuals, creeds, sects or political parties,

"When this activity is ever-expanding and self-sustaining, yet has no organization, no by-laws, no membership, no dues, no committees, and no officers,

"When thousands in Los Angeles and vicinity gather together every week to study and practice its teachings,

"Then it is time that our city and the country and the world knew more about it.

"I have attended the meetings and found the general atmosphere one of happiness, prosperity, kindliness and reverence.

"The talks and activities engaged in are of a nature that commands the utmost respect whether one conforms or not.

"The ideals stood for, the ideas put forth, and the teachings of the speakers are based on a code of such high standing that they cannot be challenged by anhone on the grounds of morals, ethics or patriotism. In fact, I have never heard precepts of such integrity and demands for such personal purity advanced by any other group.

"Quiet, profuond, dignified, sincere determination characterizes the whole proceedings, and it is a movement to be definitely reckoned with in the future of our land.

"To you whose column has ever stood for all that is fine and who have always shown interest [875] in activities that are an influence on the public life of our city *annd* nation, and yet outside the routine news channels, I call attention to this movement.

"This is no effort on my part to convince, convert or proselyte. I am simply saying to you, 'Here is something going on in our world that is an increasingly important activity for its betterment. Watch it! Learn about it! And contact its leaders, Mr. and Mrs. G. W. Ballard, who are two of the most astounding personalities of our day.

"They are at present holding a ten day class at the Scottish Rite Cathedral in San Francisco from January 23rd to February 6th.

"The 'Times' Sunday Magazine on May 22, 1932, had an article about a mysterious people who live near Mt. Shasta. Mr. Ballard's experiences as related in his book "Unveiled Mysteries" (pen name Godfrey Ray King), also had their inception at that point.

"If this is interesting to you and you care to look into its further, you will find much to ward your time."

Now, the gentleman that wrote that letter referred to an article that had been in The Times in May 22, 1932, concerning the mysterious people living at Mount Shasta.

Now, in 1932, as we have seen, the manuscript of the "Unveiled Mysteries" had already been written and that time Mr. Ballard was back in Chicago, yet even in The Los Angeles Times we find articles about the mysterious people who are living at Mount Shasta.

These things are all given to you with the idea and the fundamental purpose that I am driving at, to try and demonstrate [876] that these things are believable by all people.

Mr. Rogers wrote some other letters, which I feel should be called to your attention. They are letters that were written by him after he had left the activity, but reveal what his attitude was, and I think they are particularly important because of the length of time Mr. Rogers was with the activity and the opportunities that he had of observing and seeing exactly what was going on.

Mr. Rogers wrote in the letter of December 21, 1939, in part—this was a letter addressed to the Ballards, and I am only reading part of it:

> "It has been my happiness to render a service on various occasions to the light since my termination. It has spread everywhere that even though Harry was dismissed he is just as loyal as always and does all he can to hold all the students in line, and to remain loyal to St. Germain, to you and this Great Light."

Skipping a bit:

> "Needless to say I would like to have a few

minutes with you while you are in Los Angeles."

He wrote again, in a letter of January 10, 1940, and at that time he had been out of the activity for some time, and in the letter at that time he said:

"Yes, dear one, I am still loyal to St. Germain, and the Messengers and the Light.'

Skipping some:

"How happy it makes me to know you are so loyal to St. Germain and the beloved Messengers. Keep it up. You bet your boots I am teaching the kiddies about the 'Presence' and you should see my little Celeste (age 6) and I in our morning [877] contemplation."

Now, gentlemen, Mr. Rogers, with his familiarity with this activity, with the understanding that he had of it, with his knowledge of these people, would most certainly not be taking his own children into the contemplation with him and bringing them up into the belief of this activity if he had obtained the slightest notion that at any time in his contact with this activity these people were just frauds and deceivers and didn't believe the things which they taught and the things that they preached, and if he didn't believe that they were sincere, proper and valid beliefs for his children to hold as a guide to their activities.

He again wrote on February 6, 1940—and this is a copy of the letter he gave the Ballards of letters that he sent to the students that wrote to him.

He said:

"Hundred pleaded with me to start a class of my own. I rejected every plea and made it very plain that I had no such intention and would remain just as loyal to this light, to Saint Germain and you blessed ones as theretofore. I pleaded with all the students to do the same and still do. I pleaded with them to go at once to Ratana's Temple, the Sindelar's, Frank Lannings' or wherever they felt most at home, and to lose no time in doing it, and still do."

• • •

"Several times each day I call to be shown by my own 'Presence' exactly what I should do to help straighten out any unfinished affairs that concern the activity in any manner whatsoever. I know that I will be shown—and it will be done." [878]

Skipping a bit, he says:

"Many letters have come to me and still do from all over the nation, and outside nations, asking me what they should do, etc. My answer has always been to stand loyal and faithful to this light, Saint Germain, and to you Daddy and Don, and to not let anything swerve them for the fraction of a moment. Such letters still keep coming."

Mr. Rogers indicates that this activity not only has spread all over the nation but it is likewise outside. The Ballards had not left the country, but the

activity had spread out of the country, and that again indicates that the teachings were going into other nations, into other countries, and were being accepted by the people there upon their own merit and nothing else, and not by reason of any influence or any domination or control of the Ballards personally, as contended for by the Government.

Mr. Rogers testified—and this, I think, is very significant—he testified that he had never heard the Ballards claim that they had the power to heal people as such, that everyone had to make the call to their own I Am Presence and to project the healing rays.

That is in direct conflict with the contentions that the other witnesses have made in this activity. Mr. Rogers was with them longer than anyone else except Mrs. Bliss, but he testified that he never heard them make the statement that they themselves could heal, but that only the call to the I Am Presence could do it.

He testified, and his letters clearly indicate, that at all times he also was very sincere in this activity and he believed it.

Your Honor, I am about to start with another witness, if you desire to take the recess.

The Court: Gentlemen of the jury, you will remember the admonition I have heretofore given you.

[879]

We will take our usual recess until 2:00 o'clock.

(Thereupon, at 12:05 o'clock p. m. a recess was taken until 2:00 o'clock p. m. of the same date.)

Los Angeles, California

Wednesday, January 28, 1942. 2:00 o'clock P. M.

The Court: Stipulate the jury are present, gentlemen?

Mr. Cannon: So stipulated.

Mr. Lazarus: So stipulated.

The Court: That the defendants are in court?

Mr. Neukom: So stipulated.

Mr. Peterson: So stipulated.

Mr. Gilbert: Shall I proceed, your Honor?

The Court: Yes.

Argument in Behalf of the Defandants
(Cont'd)

Mr. Gilbert: Gentlemen, the next witness whose testimony I desire to discuss is Pat Crouse.

Pat Crouse came with the activity in July of 1936 and stayed until March of 1940, and during that time, you will recall, he served as Mr. Ballard's confidential secretary.

He related that during the period of time he talked about the form letters. Those were introduced in evidence as Government's Exhibits 136 and 137, as I recall them. Those letters—and, again, may I direct to your attention the fact that many times letters were received from the sender stating that they had had the benefit [880] that had been requested before an answer to their letter had been

given—and I desire to stress that, to point out that there never has been any claim or any representation that the letters that the Ballards sent had any healing qualities. It wasn't the letters that they sent, and whether they were sent because of the number letters that they got under form letters as a matter of routine or not, there was never any representation made concerning the replies that were made to letters that came in.

The Government asked yesterday, why the defendants did not produce witnesses and letters concerning the subject of healing. That evidence is in, not only from the witnesses who testified on behalf of the defendant, but the evidence of letters themselves is in the record and it came from the mouth of the Government's own witness, Mr. Crouse, who testified that he had talked with many people who said that they were healed as a result of this activity, and he testified that he had read letters from people who had said that they had been cured of conditions that were otherwise throught to be incurable.

He related an incident of x-rays having been taken and which revealed ankylosis and that subsequent x-rays taken two days later showed that that condition had disappeared. Mr. Crouse volunteered his opinion that the first x-ray was blurred, but I suggest that that could be disregarded. I don't think Mr. Crouse knows any more about reading x-rays than I do, which is nothing, and undoubtedly, if there had been any intimation that the first

x-ray had been blurred, that the doctors who took them and interpreted them would have said so, and that Mr. Crouse, in his desire hastily to volunteer something that would detract from the benefit, that that fact, on the part of the defendants, would have stated the doctors had said so. There is no such evidence in the case. And Mr. Crouse gave, as one axample of the healings that he had seen, the actual x-ray pictures that had been taken of that [881] condition.

You will also recall the testimony of Mrs. Lovette, who recited the ailments of which she had received a cure. It is true that Mr. Neukom suggseted, by a question that he asked, that her condition was mental, but what difference would it make whether your condition was a mental one or a physical one? It was just as real to her in either case, and she was cured.

The evidence is replete with testimony from the people that they had received these benefits in that regard as to healing and in other regards, and as we know that healing to those people isn't limited to the medical use of the word. It includes many other things, as was brought out at different times, spiritual and physical things, and not purely healing a wound or a cut or a disease, but includes many, many other things besides those.

Now, we have here in Mr. Crouse's testimony some further corroborative evidence as to what the people believed in "Unveiled Mysteries" and the manner in which those experiences took place. The

Government introduced in evidence the so-called Woodward letter as their Exhibit 105, and in it is related the whereabouts, the physical whereabouts, of Mr. Ballard during certain periods of time. That letter was witnessed by both Mr. Crouse and Harry Rogers.

It recites that he, in 1929, had come out West; it recites that he had been in California in 1930, that he had gone back near Chicago in the latter part of '31, and had moved to Chicago in, I think, May of 1932. That letter was concerning a discussion that had been had in the presence of Mr. Rogers and Mr. Crouse, and both of whom witnessed it. They were told, and there is further corroborative testimony to that effect, they were being told all the time and they knew where Mr. Ballard was, where he said he was, where he stated he was, where he claimed to be physically.

Mr. Crouse stated that he talked to the Ballards of the things that had been manifested to them and that he believed them. [882] He was intimately associated with them over a long period of time, and he testified that even after the he left activity he still believed it. He would have certainly had an opportunity, if anybody would have had, to observe and to know that this was a scheme and an evil intent, but he stated that he stayed with it for three and a half years and not at all during that time apparently did it occur to him that there was anything that he knew, his intimation, association with these

people, that they at any time had any evil intent or were conducting a fraud.

He identified, and there were introduced in evidence, certain letters showing the income that had been received, but he testified that those sheets didn't purport even to indicate the expenses to which these people had been put; didn't show a net return at all and, as Mr. Peterson brought out this morning, the Government has those figures. The testimony of Mr. Callahan shows that the figures on these things were obtained from the beginning of the publication of these books and that those were turned over for an F. B. I. audit, which I think we will all agree and in all probability is a very thorough audit. They have the exact figures in these things.

The Government, as you will notice, produced the income tax of Mr. Stickell. They have the testimony of these exact things, and we didn't do it, we still stand pat upon the proposition that if the Government wants to prove a lawsuit in a criminal case, it is up to them to do it.

Mr. Crouse testified that in many of the classes the average love gift was not quite as low as 8 cents, but in some they were, and in many instances the expenses were not even met. He testified that he had never heard any claim made that Saint Germain had typed these letters.

We next refer to Margaret Schall. She is the first of the student witnesses. She contacted the activity, as we have [883] mentioned, through the reading of

"Unveiled Mysteries" and "The Magic Presence" prior to the time that she even heard of the Ballards, or prior to the time she heard them at classes. She was interested, she said, in seeking to find some means to restore the eyesight to Senator Schall, that they had tried other things, that they had tried Christian Science and that that had not worked; that about a month after she contacted the activity Senator Schall was in an accident which resulted fatally.

She testified she was in the activity, I believe, over a year. She testified that she believed the teachings with increasing belief as she came to understand them.

She stated that the Ballards frequently—and she corroborates the other statements—she heard the Ballards frequently say that they would get a letter stating that a healing had been accomplished before the Ballards' letter was sent.

Now, Mrs. Schall attended a number of classes, she testified, and that she came out to California to the Los Angeles Shrine class in 1936. A lot of the witnesses, and I believe Mrs. Bliss particularly, testified that it was in the Shrine class of 1936 that Mrs. Ballard said, Mr. or Mrs. Ballard said, that a cataclysm was going to occur on either September 15th or 16th of that year. Mrs. Schall testified that there was no fixed date for a cataclysm. Mrs. Ballard said that Saint Germain himself didn't know when it was coming, and that nothing was said as to its form.

She testified that she was taught that the Mighty I Am Presence was the channel through which healing, precipitation and ascension were to come.

Mrs. Schall, I am sure, impressed all of us as being an intelligent, reasonable and analytical person. She knew and understood these teachings, and if they were subject to belief by her, what is there about it that they are not subject to belief by us? [884]

Virginia Meyer, you will recall, had the book store in San Francisco. She was contacted in the spring of 1935, I believe, by Max Gysi. She remained with the activity until 1937 and assisted from time to time in arranging the classes in San Francisco.

She contacted the "Unveiled Mysteries" through a metaphysical magazine called "The Inner Life," and testified that the publisher of "The Inner Life" had spoken highly of the principles of the I Am teachings.

She stated that in 1936 Mrs. Ballard gave her a list of over 30 books other than the Saint Germain series suitable for reading. Remember, we are discussing one of the things that the Government has never fixed, and that is an approximate time when this scheme was supposed to have been born. We are talking now in 1936. Is this a book-selling scheme when they are telling people to put in other books, not ours, to sell and inform our students to study them?

She stated that during that conversation Mrs. Ballard at that time had said that she, Mrs. Bal-

lard, knew nothing of the Bible. We will discuss that a little bit later when we get to Mr. Casterline's letter, in which he speaks of having caught Mrs. Ballard in making a few errors in her quotations of the Bible. But Mrs. Meyer testified that she, Mrs. Meyer, was sincere and wanted to help, and she gave as proof of her sincerity in the belief in this activity and its teachings the fact that while the Ballard classes were being held in San Francisco she herself would sell no books, and yet she was conducting the book store. That is the faith and the sincerity that Mrs. Meyer had in this activity.

Muriel Bliss, who was the first, as far as any of the witnesses in this case are concerned, goes back farther than any others. She testified that she had met Mrs. Ballard in 1930, and that she had attended the classes that were being held in Mrs. [885] Ballard's home on metaphysical subjects; that during that time as it progressed that Mrs. Ballard would read portions from theosophical books such as "The Fire of Creation," and "The Lives and Teachings of the Masters of the Far East," and others. Now, Mrs. Bliss testified that she met Mr. Ballard in 1932. She recalled it as being probably some time in September of that year, She fixed the picnic that they went on, and that she saw him at least once a week up to 1934. Now "The Magic Presence," the trip that is described in "The Magic Presence" relates to those years. Now, if Mrs. Bliss saw Mr. Ballard in Chicago in his physical body at least once a week from 1932 to 1934, she most obviously

knew that he wasn't in Arabia, didn't she? She testified that she believed the teachings of these books. What did she believe? She didn't believe that there was a representation in this book that he had had those experiences in his physical body. She believed exactly what was told her and exactly what is represented in the books that those experiences were the experiences as Mrs. Ballard described them as having taken place on the inner plane. She testified as corroborative of that that she hadn't missed a single class up until the time she left in 1934. She said at the classes that were being held in the Ballard home in Chicago people had to be passed upon and invited. The letter that appoints her as a messenger, you will recall, tells her to follow her inner promptings and she is not to feel compelled to do anything because of being a messenger.

Mrs. Bliss was one of the persons who testified that she thought that ascension meant levitation of the entire physical body, including the clothing, and said she was taught by the Ballards of Jesus' ascension which occurred without death.

She testified—and she was connected with this activity until 1939—that the classes, her classes, the things that she had to do with her classes and her groups and reading rooms were [886] entirely independent of the Ballards. The note here shows it was Mrs. Bliss who testified that at the Ballard class in the Shrine Auditorium in 1936 it was stated that the cataclysm would occur on September 15th

or 16th, 1936, and which, as we have just seen, Mrs. Schall heard no such thing.

Now, as to Mrs. Bliss' sincerity and belief in this activity, I would like to read to you, and feel that I should read to you, a portion of some of the letters that she wrote. Exhibit L was read which was the letter of January 4, 1935. Mrs. Bliss had just finished testifying that she did not understand precipitation to be anything except she was the one that said "You look up and see the particles and imagine what you want and it comes and sets down in front of you"; that she hadn't mentioned precipitation of an automobile, and Mr. Cannon read to her a letter in which she refers to an automobile in the case and calls it "a precipitated, lovely gift, and it is much more than an automobile because of that."

She states in the same letter that she had received eight dollars—let me go back.

She states, "I am very enthusiastic about establishing here a Saint Germain lending library for the students. I was wondering about it, desiring and working for it when along came an eight dollar gift bond on Brentano's as a Christmas present from Mr. Stickell's class. Maybe that wasn't precipitation."

She understood that precipitation was the same thing that they were taught, just like the rest of the students testified they were, as is in the books and as read to you from "The Voice" magazine, that these people were taught and believed that

precipitation means an answer to their decrees which comes through natural channels.

It was pointed out by Dr. Haldey, I think it was, that you must always discriminate as to whether you are talking about precipitation by an ascended or un-ascended being and keep that distinction well in mind. The letter goes on: [887]

> "Maybe that wasn't precipitation. I said to it, 'Little piece of paper, you are the cornerstone of Saint Germain's library.' So I ordered the Spalding books and 'The Dweller on Two Planets.' Every student must have your books so later I may get them."

May I repeat, "later I may get them." This is Mrs. Bliss, the person who had known the Ballards since 1930 and she is writing to the Ballards and that maybe she will get their books. If this were a book selling scheme, don't you think the person that they had known since 1930 who was carrying on a portion of their activity with them, that some effort of some sort would have been made to sell her the books? Yet Mrs. Bliss expresses the attitude that she had, "Maybe I will get yours too."

Mrs. Bliss at one point in her testimony endeavored to corroborate Max Gysi about the phrasing of the phrase "Magic I Am Presence" and she testified that she didn't recall hearing of it until about 1934 or '35. At that time there was read in not only the Killen letters but letters addressed to her in which the same phrase "The Magic I Am

Presence" itself was used. She testified that she hadn't heard of it earlier in an endeavor, I assume, to corroborate Mr. Gysi, who in turn had endeavored to make the point that this phrase was just something that has been given by somebody else.

Mrs. Bliss testified that Mrs. Ballard quoted the Bible during lectures, again in refutation of the other witnesses that they didn't, and in refutation, I think, of the statement—I don't know what it was thrown in for, but it was put into evidence—what Mrs. Ballard's opinion of the Bible was.

She testified that healing is supposed to come from the individualized presence. Then there is Exhibit O—and remember that Mrs. Bliss had been in contact with these people for a good [888] many years when these letters were being written—that is a letter of March 7, 1935:

> "The Presence is governing here and we stand firm in the light issuing the decree, the force of darkness shall not pass" and so on.

Skipping a little bit:

> "A lady Mrs. Cashman—" that is in another letter that I want to refer to here.

Here is the portion I want to read, the important thing in this letter:

> "Mr. Stickell is still with me in both classes. He is precious, loyal, and sincere."

Mrs. Bliss, who had been associating with him in Chicago—you remember she told you how they each had their separate classes and they split them up and took charge of them from time to time—she is writing after an association of years with Mr. Stickell that "he is precious, loyal, and sincere." She relates in this letter an experience that she believed that she had had at night with Mrs. Ballard.

> "I was with you in sleep of merely dreaming last night. You" (referring to Mrs. Ballard) "seemed mentally occupied with something that seemed to be troubling you. In any event, a whole deluge of light I am releasing to you in case it may help in some way, and we know it really does."

Mrs. Bliss referred in that letter to Mrs. Cashman. Near the end of the letter she calls her "Mrs. C."

> "Mrs. C. always sees and hears things not seen by everyone, as does her husband. She said one of these voices told her I could [889] help her. Well, God grant it."

She referred in that same letter—you will recall Mr. Lazarus has taken some time to point out to you about Mr. Cassiere's and Mr. Stickell's quoting from the Bible as they explained the chart.

Mrs. Bliss' attention was called to the description of God in Ezekiel and asked whether or not that

was the one that Mr. Stickell used when he described the chart—you remember his describing it here in the courtroom—and Mrs. Bliss was asked whether or not she had ever heard Mr. Stickell use that description in his classes. It is set out here, which I won't read, the portions from the Bible, and she said, "I heard it from Mr. Stickell." and he said that a Bible student had called it to his attention. But she corroborates Mr. Stickell in his statement and in his recitation of the explanation that he did use that explanation from the Bible in his lectures, whether it is included in the books or the magazines or not.

She also testified that Mr. Cassiere referred to the Bible in his classes and that he did not criticize the Bible. She further testified that precipitation means through any channel.

Mrs. Bliss during all that period of nine years had something of an intimate association with the Ballards and she also expresses her sincere and her complete belief and devotion to the teachings in this activity.

There is Mrs. Virginia La Ferrera who was with the activity from May 1935 until 1939. She met the Ballards in San Francisco and had been asked by Mrs. Meyer to play at a class, and eventually she became a member of the staff.

Now, Mrs. La Ferrera testified that in 1937 when Mr. Ballard was ill at Cheyenne, Wyoming, he was unable to go forward. This has to do with the Government's contention that we claimed that we

weren't ever supposed to have an illness or ever take any remedies for them. When she was testifying that Mr. Ballard felt [890] like that, she said in her testimony, "I suggested that he take an Alka-Seltzer." Now, gentlemen, if she was under the impression that Mr. or Mrs. Ballard didn't use those things, why would she ask him if he wanted it? The reason is perfectly obvious. There never had been any claim. She wasn't under the impression that these people didn't use those things if they thought it was necessary. Just as they say in "The Voice" magazine, "If you feel it is necessary to have a physician or doctor, do it."

She testified that she had confidence in the I Am activity from the time she joined it until she left. She, incidentally, was a very good friend of Mrs. Bliss and left about the same time Mrs. Bliss did. She testified that she had been present in the staff meetings and that during the staff meeting, which was not a public affair at all—it was limited to the intimate associates of the Ballards—that during the proceedings in the staff meetings, that she felt a reverential attitude and that could be nothing more or less than a sincere attitude as to those private meetings they held in their own apartment.

There was Maude Hill who started in 1934 and also left in 1939 at the time Mrs. Bliss did. She had met the Ballards in Florida through a Mrs. Pettit. She had heard Mr. Stickell say that he had given up a good law practice to carry forth the light. Now, Mrs. Maude Hill had obtained and read these books

before she heard the Ballards and she got the "Unveiled Mysteries" and "The Magic Presence" from her daughter Alice, and testified that she had had manifestations of her own.

Now, Mrs. Maude Hill also wrote some letters which exemplify and illustrate her feeling of sincerity in this activity and which are Exhibit 0 in the record.

She wrote to the Ballards. This was a letter in which she could not fix any date.

"My dearly beloved ones." [891]

I skip the first paragraph.

> "Do you know that sometimes I feel like pinching myself to find out if it is really true that so much can come my way. I know one should not condemn themselves, but sometimes I can hardly understand why I have been allowed such great blessings. I feel very humble and oh so grateful to you for your love and instruction."

Is that the evil that Mr. Lazarus is talking about that we do, as exemplified by Mrs. Hill's letter, her reaction to this teaching?

She continues on, after skipping:

> "I have another miracle to tell you. Remember at Ahwahnee I told you I could not understand why my anniversary gifts were taken, misplaced, or lost or something. You advised me not to release and to know they were not lost. Well, where do you suppose they appeared? I

awakened one morning last week with the conviction that I must go to my deposit box as soon as I could get there. I rummaged through it and in my large brown insurance envelope were reposing the diamond ring and platinum pendant and a valuable roselle medalian. They were not there Christmas. I surely got on my knees and thanked the Presence, Saint Germain and you right there in the vault and I accepted as it was shown me. How can one ever doubt?"

And she concludes:

"Lou"—Lou is her husband—"Lou joins me in sending you our heartful to overflowing [892] with love and gratitude."

She wrote again in Exhibit R, a letter of July 13, 1935, in which she stressed that the tremendous radiation which she was receiving from the activity, and concludes that letter with:

"Our daughter Alice's husband has a splendid position in Davenport, Iowa, and is well advanced since the powerful radiation you sent him. Can you believe that he was told last week that he is to be made vice-president of the Finance company he is working for? So another one of your powerful rays has borne fruit. Can you possibly understand my gratitude."

That exemplifies the attitude of Mrs. Hill and the feeling that these people had as to the things

that were being done for them, what they were taught, and the channel through which these things came in this activity.

Then there was the Gladys Kemp letter, and that was the one in which Mrs. Ballard stated to the students publicly that, "As you know, we don't give advice or tell others what they should do other than to call the law into action."

And Portia Terry. Mrs. Terry testified that she had received some healing decress and treatments, but the Government—and I think this is significant—didn't ask her whether or not she had been benefited. I think if there had been anything from this that she had not been benefited, they would have asked her and brought it out.

Now, I have just a little more reading from this witness—and this is the one letter that I referred to earlier as being what we thought one of the most important bits of evidence showing good faith—and that is the letter that Mrs. Ballard wrote to her son Donald, she thought, privately.

This is the letter that Mrs. Ballard wrote to Donald, and she [893] refers in that to "please make corrections before the group that you spoke of," and so on. This is the letter in which she is taking him to task, you will recall. And in that letter she says this:

> "Please make your peace with your Presence and Saint Germain before it is too late to remedy it in this embodiment."

Now, gentlemen, that is a private communication from the mother to her son. That is not anything for publication, that is not anything that people are trying to be roped in with; that is something written privately and secretly and to her son telling him to make his peace with the Presence and with Saint Germain, and if anything in the world could exemplify any better than that the good faith and sincere belief that Mrs. Ballard had in the Presence and in Saint Germain, when she wrote her own son to make his peace with them, then I don't know what could do it.

There are other letters, other exhibits, in the testimony, which shows what these people were doing. Exhibit 154 shows and recites that Mrs. Ballard had been working hard, so hard that she could drop in her tracks. That shows how these people were conducting this activity—working hard and sincerely to get it, before their students.

There is also Exhibit 155, that I referred to a while back in passing, where the permission from the Saint Germain Foundation for Donald to drive the car was made of record, where they wanted him to send it back so they could keep an exact and detailed record of every minute thing that they did, not to cover up at all, but as a complete record of all the little things.

Mrs. Terry testified that she also was very sincere in her devotion to this activity. She was in it for a long time. She must have understood it and analyzed it as a reasonable person.

And there is Helen Pinkerton, who had met the Ballards in [894] February of '35 and remained with them until October of 1937. She was taught that the precipitation only meant the things that they needed. She was taught that the acquiring of things depended upon the call for perfection to their own I Am Presence. That is what she was told.

Now, Mrs. Pinkerton was the one who testified that in Los Angeles she had had a conversation with Mrs. Ballard about Mrs. Pinkerton leaving her husband, and if she didn't her children would die one by one. And I want to direct this to your attention—it appears directly in the transcript—that Mrs. Pinkerton testified that she only talked to the Ballards twice, once in Florida and once in Toledo, and if she did have a conversation in Los Angeles, as she claims she did, the point of the Government that they are seeking to make is that these people were under the domination and control of the Ballards, but the evidence shows that she did go back, she didn't follow the advice or the warning or the command, or whatever the Government wants to call it, she didn't do what Mrs. Ballard told her to do, so what better evidence could there be that these people were not under the advice, domination or control of these people?

Now, the last reading that I think I have to do is in the letter that Mr. Casterline wrote to the Ballards—and that is two letters, Exhibits AA and

BB—and they were set out at the time that Mr. Casterline resigned from the activity.

Mr. Casterline, you will recall, testified that he had been a Bible student and had been with this activity for some time. He wrote, under date of May 28, 1937, stating that his group had decided to give up the activity and not follow the outline.

> "Our giving up connection with you doesn't necessarily mean that we are going to cease giving I Am instruction, it simply means that we are not going to give it after your methods. [895] This frees us to follow the leadings of our own Christ within and at the same time remove from you any embarrassment which might result from a dual teaching in the I Am as led by you."

Skipping a little bit:

> "As I have had a very thorough training in, not only Biblical literature, but also in Aramaic and Semitic literature, I know the meaning of the stem roots used in Aramaic, Hebrew, Greek and Latin versions of the Bible. So, when Bill began to rave about Jehovah as being from the astral world, I knew that he was ignorant because the stem root of the Hebrew word in Jehovah or Yahveh, means I Am while the verbal forms means 'He who begins to be and is.' During all the time I have known Bill I have caught him in about an hundred mistakes in Biblical quotations and interpretations."

Well, if he had caught him in a hundred mistakes in the quotations and interpretations, it must be obvious that Mr. Cassiere was referring to the Bible frequently in order to have been, even under Mr. Casterline's interpretation of the Bible, in error.

And then he continues:

"I have caught a few on you as well."

And then he wrote a subsequent letter, which is Exhibit BB, in which he explains a little bit what had just been said:

"Lest you might interpret my recent letter to mean that I believe that you and Mr. Ballards started out to deliberately deceive the religious public, I am adding this to my letter. I do not believe such to be the case. I am able to accept [896] the TEACHING in the first three books, but I do believe that in the last year in some way, unknown to yourselves, you have been used by those who would be the natural enemies of such a teaching. I cannot follow the outline, I cannot accept the discourses in the magazines, I cannot accept the EXPERIENCES, I cannot accept the long decrees, for Jesus said that a man wouldn't be heard for much speaking, but let a man's communication be, yea, yea and nay, nay.

"Under these circumstances I believed it to be far better to retire as a leader, than to enter into a controversy. Such a move would

set us both free, I to teach what I could accept, and, having no direct connection with you, naturally you could not be looked upon as responsible for what came out of our class. It was fair to you and fair to us. I am not your enemy nor an enemy of what you sincerely believe you should teach. I am just a son of the 'I Am' who wishes to well to you and wouldn't lift a finger publicly against you or your work. After all Gamiel's advice to the Jews as to what they ought to do about the new Christian faith, is as pertinent today as it was then, he said: 'Leave them alone, if it is *fo* God you can't stop it and you would be fighting against God, if it is not of God it will fall to the ground.' "

There is then the testimony of Mr. Ernest Ricord, Mr. Murray Stover and George Stevens and Catherine Rogers, all of whom testified as to their belief in the sincerity of this movement.

Mr. Ricord—just one or two things in particular about him—[897] was a minute man. He said that that was not exactly an organization, it was just a meeting where special instruction was given for the preservation of the system of government under which we live. He said he was devoted and sincere in his adherence to these principles and that he had never heard of the ascension being confined to any particular group.

Mr. Stevens was the Board of Equalization accountant, and you will recall that last year—and

this illustrates the point that Mr. Peterson made this morning—that the people who have testified for the Government are simply those who have come to choose a different belief, and Mr. Stevens exemplifies that from his testimony where it appears that last year he had testified that there was no conflict between the old and the new dispensation of the ascension, that last year he had felt that that was an unfoldment and that there was nothing inconsistent with it. This year he testified that it is inconsistent. It is simply a change of mind, a change in the method of wanting to believe. And that is all that has happened to the witnesses on behalf of the Government.

Catherine Rogers, one thing about her, she was the one who testified that she had heard the conversation in which Mr. Ballard said he didn't want another book to be brought out. It seems rather self-evident, gentlemen, that if this were a book-selling scheme you wouldn't want to suppress the books, you would want to bring them out, but their own witness testified that this was not a book-selling scheme.

Those witnesses—I haven't tried to cover them all; there will be some more mentions from others—but they all exemplify this one proposition which I have mentioned to you before, that these things are things which people, reasonable people, do believe, they are familiar with these things, they know about them, and if they are susceptible of belief

by those people, what is there about it that makes it insusceptible of sincere belief [898] by us?

Now, yesterday Mr. Lazarus covered about all of the subjects in the different groups. On different things he took considerable exception. One thing that he objected to was the decree books and the length of the decrees and the fact that they were sold.

On my way up here this morning I bought a little prayer book, and I reiterate again, when I mention any of these things I am not doing it for the purpose at all of comparing religions, I am only doing it for the purpose, as has been reiterated, of showing that these things are believed by millions, and that there can be nothing that makes it improper for us also sincerely to believe the same things.

We have under "Thanksgivings" a prayer for rain, a prayer for plenty, a prayer for fair weather; a prayer for peace and deliverance from our enemies; a prayer for a recovery from sickness. We have a prayer for healing.

And as to the length of the decrees which Mr. Lazarus objected to, I noted this, in the back of the book, they have the morning prayer and the evening prayer, and when you turn over the page they have the same thing in short form.

This prayer book—it is rather compressed in a small size—but it consists of over 500 prayers.

Mr. Lazarus yesterday said—I believe he was commenting on K-17 or on the decrees—he thanked God that we did not have to depend upon the

decrees for the preservation of this country, and I wondered at that time when he said "Thank God," just to whom he was addressing himself. When I got home last night one of the first things that struck me in the paper, January 27th of the Herald, on the second front page was a photograph of the church delegates in Los Angeles praying for peace and a better world. I wondered what is there that these good people shown in this photograph can pray for peace and a better world and believe it to be [899] efficacious, and we can decree for peace and a better world and not believe in the same way that they do in this efficacy.

These people shown in this photograph, as Mr. Peterson observed this morning, make their livelihood teaching these things. While they are out here they had to pay their transportation to get here. While they are here they have to have the money for their expenses. The Government, if it chose, could make the same kind of case against any one of those people that it has here. Where are you going to draw the line, gentlemen?

Now, I don't profess to have any knowledge about faith healing. I have an opinion on it, but I don't claim to know anything about it. I do know this: It was just about a year ago today when we were arguing the case and it was mentioned at that time that Lord Lothian, who was high in the British Embassy in Washington, D. C., passed away with a Christian Science practitioner at his side. Maybe he was right and maybe he was wrong. That is not

for us to say. The fact is he believed in it. I don't know anything about the hereafter. I have an opinion on it. I don't know anything about ascension. We all have opinions on that. But I do know that Sir Oliver Lodge, who was a world renowned physicist and scientist and who spent his life examining into the physical aspects of this universe, died in the belief that he could send a message back to this world from the other world. Whether he was right or whether he was wrong is beside the point. The fact is he believed it and he believed it sincerely.

So, gentlemen, I leave just this thought with you: Whether you believe these things or whether you don't, whether they sound real or unreal to you, is all beside the point. The only proposition to submit to you now, gentlemen, under the Court's instructions you cannot pass upon the verity of the existence of the ascended beings. Leaving that alone, what is there in this universe that says that these other people may believe their prayers, may believe [900] their religions, may believe in the after life? What is it that says they can be sincere and have good faith in their belief, and at the same time on the same subject say that we cannot?

Thank you. [901]

ARGUMENT IN BEHALF OF THE DEFENDANTS

(Continued)

Mr. Donnelly: May it please the Court, gentlemen of the prosecution, and gentlemen of the jury: Hate is indeed a terrible thing, isn't it?

> "When one allows his mind to dwell upon thoughts of hate, condemnation, lust, envy, jealousy, criticism, fear, doubt, or suspicion, and allows these feelings of irritation to generate within him, he will certainly have discord, failure, and disaster in his mind, body and world. As long as he persists in allowing his attention to be held by such thoughts—whether they be about nations, persons, places, condition, or things—he is absorbing those activities into the substance of his mind, his body, and his affairs. In fact he is compelling—forcing—them into his experience."

That, gentlemen, is a quotation from an exact statement appearing on page 7 of "Unveiled Mysteries." That to my mind should convey a great deal to the minds of you gentlemen. I don't think you got the impression from Mr. Lazarus' argument that he was particularly in love with Mrs. Ballard. I feel sorry for the gentleman, for I know he has been assigned to do a job. He has tried to do it the best way he could, and he has passed the odious burden of the final decision to you gentlemen.

It may not be inappropriate to say what Mr. Justice Brandeis said in a recent Supreme Court case in one of his famous dissenting opinions. As you all know, that eminent justice was a great believer in freedom and liberty of expression and thought. He said in the case of Olmstead v. United States:

> "The greatest dangers to liberty lurk in insidious [902] enroachment by men of zeal, well meaning but without understanding."

Now my friend of the prosecution, I hope, does not believe that he can stand in judgment himself personally over these people. I suffer for him if he does think that, for in Romans it is said:

> "Who art thou that judgest another man's servant? To his own master he standeth or falleth. Yea, he shall be holden up: for God is able to make him stand."

And it is my premise that God, to these people the Mighty I Am Presence, will make them stand in your minds and in your hearts when you come to deliberate upon the evidence and the facts in this case, not a smokescreen as my friend said we are going to throw up around this case. I don't believe I have ever heard a more scholarly or more accurate argument given to a jury by a defense counsel than that which you have just heard by Mr. Gilbert, a clear analysis of the evidence, of the Government's own evidence.

They say we are going to try to smokescreen you. You haven't heard any great amount of quotations from the Holy Scriptures because we contend that the words that these people have said and have expressed and have written will stand, and they will stand eternally because they are the truth, and wherever in any of these writings you have seen that word "truth" it is always capitalized. It is always eternal.

Now, it falls to my lot to try to take up where Mr .Gilbert left off and to show you gentlemen that the Government's evidence has failed to support the charges of the indictment.

My friend referred to this as a great money making scheme. There is no purpose in my again repeating that they failed to bring you any evidence of the great profits and the great income to Mrs. Ballard from this work. They had that evidence in their possession, but they didn't see fit to bring it before you. [903]

Now, he has also stated several times that he would have liked to have heard an explanation of this or that or of some other thing. The burden is not upon the defense to come in here and educate you into these teachings. We started out on the premise that your minds were free of any knowledge of this case. Some of these people have been practicing these teachings for seven, eight, or nine years and it would be a hopeless task for us to try to come in here and give you all these teachings that have gone on over these eight, nine, or ten years and that the

public has received. On the contrary, it is our duty or our obligation on behalf of the defendants to meet whatever the Government has brought in, keeping in mind that the presumption of innocence is always in our favor until it is overridden by substantial, beyond-a-reasonable-doubt evidence to the contrary.

This Christian activity—and it is a Christian activity—whether you want to call it a religion or whether you want to call it educational or patriotic—it requires money to sustain it just as every church in our country requires money to sustain themselves, and some of our churches require a lot of money and there is no law that I know of that forbids the collection of that money.

I think we have shown to you beyond any reasonable doubt that so far as the money that is necessary to carry on this activity is concerned comes as a free-will offer of love from the people who are interested in these teachings. You have heard a great deal about love gifts. You have heard of love gift boxes, love gift envelopes. You have heard that those boxes are in the outer lobby of these temples, the Masonic Temple in Washington, D. C., the Shrine Auditorium here in Los Angeles, the Scottish Rite Temple in San Francisco, and the temples in other places throughout the country. They are in the outer lobby. People who wish can put contributions in those boxes. Now, they don't put them in when [904] they go in. That is reasonable because there is no admission charge. They put them in

when they come out, if they are going to put them in at all. You have heard several witnesses say that sometimes they contributed and sometimes they didn't. So if they do put a nickel or a dime or even a dollar bill in a love gift envelope and drop it in the box, they do it after they have received something. What have they received? In my opinion, they have received some spiritual enlightenment that they haven't been able to receive from other means.

Mr. Crouse testified that he wasn't sure as to the average donation, but he thought—or words to that effect—that it was around 8 cents a person. Several of these witnesses have testified about large sums they have given. $500, I believe Mrs. Bliss said she had given in nine years. Mr. Bliss probably gave a great deal more than that in that same period of time to whatever church she belonged to before she ever came to this activity, if she ever did belong to a church. The same is true of a number of others. It sounds enormous when it is added together, but when you gentlemen go to figuring up your income tax returns this month or next month when they are due, when you start figuring out what you gave to your church, do you know how much? I don't know. Most of us put down a figure which we guess at, which is logical, and probably what is at least half of what we really did give.

Now, the indictment charges that these people have obtained this money from contributions and gifts. Nothing is said about investments. They are not charged with having swindled people in any

kind of a stock scheme or anything of that sort. The people received the instructions if they wanted it. If they wanted to contribute, they contributed. If they didn't want it, they rejected it. There is nothing that forces anyone to undertake this instruction, to read these books, or to attend these lectures. It is of their own free will. [905]

Now, one of the Government exhibits in evidence on this subject of money reads as follows (this is the I Am group leader instruction):

"Financial regulations.

"Under no circumstances ever ask for money. Do not send out letters asking people for money or assistance of any kind. Saint Germain said in the beginning that this teaching must never be commercialized for private profit. Do not allow the student body to be preyed upon by any commercial activity for any reason at all. Do not ask for a dime.

"If you need money for your group activity and for expanding this light, get your group together and ask them to give a decree that the I Am Presence release to you ten times more than you need of every good thing, including money, to carry on this ascended master activity as the ascended masters desire." and so on.

We have ample testimony throughout this record —Mrs. LaFerrera, Mrs. Bliss, Mrs. Rogers—that each I Am group is separate and distinct and pays its own way.

You have heard a number of group leaders testify for the defense, and practically each and every one of them was asked, "Do you make any financial accounting or any other accounting to the Ballards?" And the answer was always "No."

Now, if this were such an insidious scheme to defraud, to mulct the people, to "flim-flam-flooge," or something like that my friend calls it, would those reading rooms, would those groups, be free and independent, financially and otherwise, of the Ballards? No, they would be a very profitable source of the supply of this great wealth that is dreamed into these people, according to my [906] friend's assumption. They would know who these people are, which would make it possible for them to secure great income from. They would want to have a so-called suck list.

My friend, in his introduction yesterday in, I believe he intended it as a compliment—at least I hope he did—referred to the experience of defense counsel. I, for one, have accepted the reference to myself as a compliment, because in the more than 200 cases which he referred to, and which I have been in one way or another associated, in half of those cases I would say that I have been on the Government's side, and I have seen the Government make the mistakes, and I have seen the Government make mistakes in this case, and I don't believe you, as reasonable, intelligent men, are going to let my opinion or Mr. Lazarus' opinion or Mr. Neukom's opinion influence you one way or the other.

As a matter of fact, we had quite a bit of discussion yesterday after Mr. Lazarus completed his argument that perhaps we would waive argument, because we felt that Mr. Lazarus had said nothing on the factual side of this case that could persuade you to return a verdict of guilty against these defendants.

However, we have been here eight weeks with you, we like to see you, and you probably like to see us sometimes. I agree with Mr. Peterson that there ought to be some system whereby a bell would ring or a whistle blow when a jury gets tired of hearing a lawyer, because they never get tired of hearing the judge because they are not allowed to, but lawyers can often times talk themselves hoarse and sometimes talk a jury deaf, dumb and blind, and we are not going to try to do that.

Now, I want just in passing to take this indictment. It is a very unwieldy sort of document, but the first thing that I observe on page 1 is that these defendants "did unlawfully, knowingly and wilfully devise and intend to devise a scheme and artifice to defraud." [907]

All right. You will receive instructions from the Court at the close of the argument as to what "wilfully, knowingly and unlawfully" means. It means with a wilfull intent. That is about the nearest I can come to it explaining it in a few words. And you have got to find, gentlemen, after considering all the evidence in this case and resolving everything in favor of the defendants that you

can where there are two reasonable hypotheses, you have got to find that they had wilfull intent to defraud, and that they knowingly—in other words, viciously—did these things.

Now, they are supposed to have defrauded a great class of people. Margaret Schall is named as one of them, Thomas Stevens, Maud Hill, Ernest Ricord, William I. Ferguson, Muriel Bliss, Gladys Kemp.

William I. Ferguson. William I. Ferguson didn't appear before you. They brought Mrs. Ferguson here. She could tell you all about it, but when it came to a question of something about Mr. Ferguson—"No, I didn't write that. He did that part of it. No, I didn't do it." Yet Mr. Ferguson was in the courtroom all during this trial, according to the testimony of one of the defendants' witnesses.

Mr. Lazarus: If the Court please, I wish to correct that statement. I believe that that should not stand in the record. I would like to have the exact reference in the transcript, if it is so. Mr. Ferguson was not in the courtroom, nor does it appear in the record that he was.

Mr. Cannon: Miss Majerus testified to it. I will give you the page.

The Court: Furnish counsel with the page number. Continue your argument.

Mr. Neukom: As long as we are interrupting, I don't want to interrupt you again, but I do want to make one statement, your Honor. [908]

There has been some reference here as to books of account. The inference has been left with the

jury that the Government have all the books of account of these defendants.

I would like to have the jury informed that these books of account that we have were of a corporation which was formed in December 12, 1939.

The Court: I think counsel will take care of that.

Mr. Cannon: We will argue that.

Mr. Donnelly: Shall I proceed your Honor, or do you wish to wait?

The Court: Proceed.

Mr. Donnelly: I think we will straighten that point out, and I also wish to say, if I have made any references to things that are not in the record, other than my references to my own personal opinion about things, I wish to stand corrected and I hope they will correct me.

Now, we start out in this indictment by saying that they "did create, organize and operate a certain organization or movement known as the I Am movement."

Mr. Gilbert has raised the question very substantially as to where is the proof of the beginning, that is, the creation, of this so-called scheme.

There is no question as to the fact that the Saint Germain Foundation is an Illinois corporation, as stated in the indictment, and there is no question as to the fact that it is a non-profit corporation. There is evidence upon that.

Now, there is no question as to the fact that there the Saint Germain Press. These books are published by the Saint Germain Press. That is a com-

mercial enterprise, it is true. It is a profit corporation, just the same as any other type of business is that is engaged in for profit, whether it be an automobile business, whether it be a plumbing establishment that is incorporated, or what not.

[909]

Now, so far so good. We will agree upon that, that there is such corporations; and we will agree that they had offices.

However, we will not agree, and we contend that the evidence does not so establish, that, in addition to organizing these corporations, "it was a further part of the said scheme and artifice to defraud that the defendants by means of false and fraudulent representations, pretenses and promises, solicit, induce, encourage, persuade and entice the persons to be defrauded to purchase from the said defendants various books, charts, pamphlets, magazines and other written and printed matter published by the said Saint Germain Press."

I don't believe there has been a single item of testimony produced here that could lead you to the inference that people have been induced, persuaded or enticed into buying anything from the Saint Germain Press.

There is testimony that these books were available in Brentano's, an internationally known bookselling store. Incidentally, Miss Majerus was a former employee of that organization.

There is testimony here that the books are in

public libraries where anyone who may wish to read them may go and find them.

There is testimony here that the books are in the Library of Congress, where Mrs. Schall read the books, at the Library of Congress; where she, a little different from us poor mortals who have to get special permission to get those books from the Library of Congress, she had access to them because she was the secretary for many—yea, many—years of her famous husband, the Senator from Minnesota.

I knew Senator Schall in his lifetime. I knew he was a fine gentleman. I saw Mrs. Schall on the witness stand. Do you think she was an ignorant, credulous, fanatical woman? Of course she wasn't. You saw her Phi Beta Kappa key hanging around her neck, if you observed her closely. [910]

Now, she is one of those who was to be defrauded. So she reads the books in the Congressional Library, so she likes them, and she goes out and buys them. All right.

Now, all the other witnesses that I can remember proceeded along the same lines. They were told about the books or loaned the books by friends. That is how they came in contact with them. They were told about the meetings. There was no great glaring advertisement, such as you will find in most or a great many of the Los Angeles papers, telling about where you can hear a lecture on salvation, or a lecture on perdition, or where is hell, and all those things. You can pick up a paper every day

and somebody is giving a lecture on one of those phases of belief, spiritual conception.

Now, coming to, we might call, the gist of the indictment, the first charge is that the defendant Guy W. Ballard had obtained a supernatural state of self-immortality.

There is no evidence, I submit to you, gentlemen, in this record that could anywhere come close to establishing that statement as a fact. The evidence is substantially to the contrary.

There was a reference read to you by my friend yesterday from "The Voice" "Look upon these people. They seem and are very humble." And that was read to you by my friend of the prosecution. So how could they contend that Mr. Ballard claimed to have obtained a supernatural state of self-immortality, whatever that phraseology may mean?

They claim that he did, in fact, die on December 29, 1939, in the City of Los Angeles, California, following an operation performed upon him. All right! To their way of reasoning maybe Mr. Ballard did die according to medical and legal standards. These people believed, and they believed sincerely and earnestly and honestly that Guy W. Ballard ascended. Frankly, all through this case there has run an undercurrent of something strange and mystical to me personally. Regardless of whether I accept or reject the I Am teachings, I can't help but feel that there was something in the life of Guy W. Ballard [911] that made him a little better than the ordinary run of human beings. Guy W.

Ballard was more than a preacher. He was more than a prophet. He has been condemned in this courtroom. He has been condemned as have other preachers and other prophets. I feel personally that Guy W. Ballard left behind him a message on this earth that will be difficult to eradicate from the minds of men. I feel that he has brought a great deal of good into a world that has been suffering from evil, a degeneracy of the spirit. I feel that Guy W. Ballard has ascended, if there is such a thing, for I feel that it was his reward to be called with the masters with whom he worked in order to bring about a better state of spiritual resistance to the forces of evil and hatred and degeneracy that have forced themselves upon this country at this time. Be that as it may, that is my opinion.

He may have been immortal when he was here. I don't know. There was no proof that he was not. There is no proof that he claimed that he was.

Now, they charge also that Guy W. Ballard—and you will notice the preliminary part of this indictment goes to Guy W. Ballard—that he was a divine messenger and that the words of ascended masters and the words of the alleged divine entity, Saint Germain, would be transmitted to mankind through the medium of the said Guy W. Ballard. That is supposed to have been false, but the Court has already told you that you may not speculate upon whether or not Guy W. Ballard had these experiences with the ascended ones. However, there

has been no proof, so far as I can find in the record, that Guy W. Ballard did not transmit to mankind the words of the ascended masters or certain principles and teachings.

Now, they claim again that Guy W. Ballard during his lifetime, and Edna W. Ballard and Donald Ballard, by reason of their alleged high spiritual attainments and righteous conduct, had been selected and designated to bring forth these teachings; whereas—this is from the indictment—none, neither, nor any of the three above designated [912] persons had in fact achieved a high spiritual attainment; and whereas in fact none, neither, nor any of the said three designated persons have in fact lived a life either prior to the date set forth in the herein indictment or continuously up to and including the filing thereof, which said life adhered to and consisted of, righteous conduct. That is a little ambiguous to my way of thinking. I haven't found any evidence that showed that either Guy W. Ballard or Edna W. Ballard or their son Donald Ballard had conducted themselves in anything but a righteous manner. There has been no testimony of riotous living. There has been no evidence showing the fruition, fruits of any fraud. It would seem to me that if they had not lived a righteous life, the Government would have known about it. They would have known about their troubles and their tribulations and they would have brought it forcefully home to you if they thought seriously about Donald Ballard drinking soda pop behind the cur-

tains in the Shrine Auditorium. If that is unrighteous conduct, then I am guilty of unrighteous conduct in addressing you. That is the smokescreen of this case, gentlemen. We are not the ones that are bringing any smokescreen to you. Those trivialities, do they point to unrighteous conduct? Certainly not.

If these people had been guilty of any fraudulent scheme, had gained this great income, don't you think they would have had a palatial home somewhere? Don't you think they would have had yachts? Don't you think they would have had other things that sometimes we find promoters of mail fraud schemes having or accomplishing? No indeed.

Pat Crouse said fourteen classes a year every year since 1935, from 10 to 17 days a class. Classes start at 1:00 o'clock and run into 11:00 o'clock at night or after. Thousands of people calling upon the Ballards for their attention, their audience with them. Where these people ever got any rest, I don't know. That is one of the reasons I say they are just a little bit better than us [913] ordinary poor mortals. How a man and his wife of apparently limited educational advantages, a man who was almost impoverished, apparently in 1930 at Mount Shasta—that is, he was living frugally anyhow—could bring forth to the people of this country a conception of spiritual divinity and the relation of man to his maker, work 20 hours a day, write for these publications and not have something of the spark of divinity in them is more than I can see.

It has been difficult for us of the defense in working on this lawsuit, and it has worn us out and probably worn some of you gentlemen out by this time. I can't work like the Ballards worked. And what did they get for it? They got an indictment filed in the United States District Court because they dared to come forth and preach and work and slave to give humanity something of good and nothing of evil. The greatest indignity is the drawing together of twelve good men and true, sworn to well and truly try this case, to require them to sit here for eight weeks and listen to this thing like Donald Ballard drinking soda pop behind a curtain in the Shrine Auditorium.

Does your Honor wish to take an afternoon recess? It doesn't make any difference to me.

The Court: Gentlemen of the jury, you will remember my admonition to you, and we will take a 15-minute recess.

(At this point a short recess was taken, after which proceedings were resumed as follows:)

Mr. Donnelly: Now, gentlemen of the jury, we left off in the afternoon recess and were discussing something about the righteous conduct allegation of this indictment.

I submit to you in passing that allegation that if there is anything immoral and unrighteous about the conduct of these people, it would have been shown, and you can bet your bottom dollar on that. But there is nothing in that connection that has been shown you. [914]

Now the evidence in this case, to my way of thinking, separates itself into two distinct classes: First, the teachings of this movement, the public utterances, the public writings; and, secondly, the private conversations between certain of the defendants and certain members of the public or members of the Ballard staff.

The Judge very properly has told you at one stage of this proceeding that you were to disregard a certain telegram relating to the dismissal of someone on the staff, that that was a staff- or inner-discipline, organization discipline proposition. And I submit to you that much of the material that has gone into this tremendous record has been based upon the conversations between Mrs. Ballard or Mr. Ballard and members of the staff. Some of those conversations went back into ancient history almost, and yet witnesses have come on the stand and almost have given you their conception of it as it took place word for word.

For example, we have certain things like the reference made by Mr. Lazarus yesterday that Donald had testified in another case that he had had no experiences with Saint Germain. That to my mind is certainly the subject of argument. I have no doubt but what Donald meant in that statement that he had not had the experiences with the masters that his father and mother had had; he had not gone through the adventures, these happenings, that are detailed as Mrs. Ballard's own experiences in the books.

Now we have a woman who comes on the stand and tells you that Donald denied to her that Jesus had held his mother in His arms. That is a small triviality for an intelligent person to bring forth at this late date, and where its position is in the scheme to defraud I am frank to say is a mystery to me. For all through this attempted pattern that the Government has sought to weave here, we find little flecks of insidious innuendo which cannot be the basis of fact, for fact is something that must be demonstrated to a reasonable mind. You must first find that these representations allegedly as alleged [915] were made, and then you must find that they are false, and that finding must be based on substantial evidence that precludes any possibility of two hypotheses or two interpretations, just like Donald's experience with Saint Germain.

Now a great deal of opinion is involved in a question of this kind, and it is a type of thing that I don't think Congress ever intended to bring within the so-called mail fraud statute. The cases, important cases, of mail fraud since the enactment of this statute in 1872 had to do with schemes which were, to some degree, robbery. I don't say robbery is encompassed within this statute, but I am using that as a parallel. It means that someone went out and took something from somebody who gave it up because they had been led to believe something that wasn't true.

They have gone to stock schemes, bucket houses,

bucket shops, green goods swindles, that is counterfeit money, and things of that type.

The few cases that have involved spiritual concepts have, on the whole, been precluded from the mail fraud statute. The blessed handkerchief case cited by my friend of the prosecution, it is true, is a case in which a conviction lay, and yet there have been a number of others, particularly involving Jehovah's Witnesses, whose leader has just passed on here in this city, Judge Rutherford. The Supreme Court records are full of Jehovah's Witnesses.

And, strainge to say, the majority of the opinions are favorable to Jehovah's Witnesses.

Mr. Neukom: Your Honor, I hate to interrupt, but any allusion to a Jehovah's Witnesses case, which as counsel knows, was not a mail fraud case, which was brought under the right of a person whether they should or should not salute the flag, as to that precept, has no part in this argument.

The Court: I think that counsel is using it as illustrative matter and I think that, in view of the fact that you have a reply, those matters can be called to the attention of the jury if you feel that there is any statement you would like to controvert.

[916]

Mr. Neukom: Very well.

Mr. Donnelly: It is true, as counsel says, the Jehovah Witness cases do not involve mail fraud, as we are here confronted; they do involve matters

of the circulation of spiritual, of their beliefs, and are not concerned solely with the saluting of the flag. The single case on that subject, the Goldbetter case, did involve that subject.

However, in this particular case—and it seems to be a point that was pretty well glossed over by the Government in their effort to show you—wherein some insidious proposition lay, was the proposition of the patriotic devotion of these people. My friend of the prosecution—and incidentally, there isn't any question in the mnids of any of you, I don't believe, that these people aren't patriots and devotedly so, and that they salute the flag, according to the evidence, at every one of these meetings, they sing the National Anthem, and they engage in other patriotic activities. You have seen all of the defendants and the student witnesses appear on that stand, and you have seen their American flag over their left breast. Every one has been identified by that characteristic.

Now passing that for the moment, I would direct your attention to certain references in the literature, itself, on this question of patriotic devotion. I had not intended to go into the subject, but when my friend of the prosecution appealed to you to punish these people so that the boys that were overseas could come back to a better world, which apparently he intended to mean a world free of the Ballard teachings, I feel it my duty thereby to answer him to a certain measure.

Now in one of the books there appears a disserta-

tion called "Blessing to the Flag by G. W. Ballard," on Constitution Day, Seattle, Washington, September 18, 1938.

There is a teaching read regularly apparently at the classes which is in evidence, "Protect our Constitution of the United States", [917] the closing paragraph of which is:

> "America, we love and bless you. Your light shall blaze forth and cover the earth with its dazzling radiance and release its eternal perfection everywhere, forever and forever. We love you our blessed America."

And there are many other references throughout the literature to the flag and to the Constitution and to this country.

Now on that particular subject, when we speak of the men that are going to return, Mr. Peterson has already referred to what they are going to return to. Are they going to return to a country that still has its bill of rights and its freedom of worship and discussion and freedom of press, or are they going to return to a country that has been deprived of those rights?

My friend stated of the momentous happenings, that a war had started since we started this case, and I would like to also say that since we started this case they have had the 150th year celebration of the bill of rights of the Constitution of the United States. Some of you gentlemen may have attended some of those ceremonies on your hours

off from this case. That bill of rights protects, in the first amendment to the Constitution, the right to worship God in the manner which the individual best sees fit.

Now Mrs. Lavett, who testified on this stand, from Washington, D. C., testified that she had two sons who were I Am students in the service of their country. Are those boys going to return after their services are up and find that they have been deprived of the right to read the I Am books, the right to attend I Am lectures, or are they going to come back and find that there is still such a thing as freedom of thought and freedom of belief and freedom of action in this great country of ours?

My friend has referred again to the war proposition, but he has neglected to point out to you in his argument that both of the [918] defendants, Cassiere and Stickell, are ex-service men, as the evidence shows.

Don't you think they are entitled to preach, to teach their beliefs? It might not be possible for them to fight this war, but they fought for their country before, and they would fight for it again if the need arose.

I merely point those things out to you so that you gentlemen may understand that one of the teachings that was not touched upon by the Government is the teaching of patriotic devotion to the flag and to the country, as exemplified throughout the printed works.

Now while I am on the subject of some of these

witnesses, I want to make some comparisons which I think are in order. You saw before you on behalf of the defense people that came from all over the United States at their own expense to testify on behalf of Mrs. Ballard and her associates. Those people are sincere, God-loving, American citizens. They were college people. There was one lady who was a Ph.D. There was a teacher, a member of the New York Stock Exchange; they were bankers, they were lawyers, they were doctors. They were Government employees, strange to say.

And if you gentlemen recall, my friend of the prosecution asked the lady from the Interstate Commerce Commission—I believe it was that lady or maybe it was the man from Denver who works for the Agricultural Adjustment Administration—"Are you under civil service?"

What materiality had such a question, or the answer to it, in this case? Why did my friend want to know whether this student was under civil service? Maybe he can answer it, because Mr. Neukom asked the question, when he has the final say to you gentlemen of the jury. I will leave that to your own judgment as to why he wanted to know whether this woman was under civil service.

Now you have had a man on the stand, an electrical contractor. He gave you an experience that occurred while he was on his way out here. That experience was one to which he attributed the saving of [919] the life of himself and his wife to her call to the Mighty I Am Presence or God. He said

they were practically lost sliding down this mountain and he heard her call to God, the Mighty I Am Presence, and the car stopped like that.

Mr. Lavett believed that. I believe it. He sincerely believed it. And all of these people that have testified before as to personal experiences, their beliefs, they sincerely believed them, and I don't think that there can be a single question of doubt about anything along that line.

We had a one-armed ex-minister, a man who spent 34 years in the Department of the Interior, a Christian minister, ordained, Dr. Buck. You heard him. Did you think that he was some insincere crackpot that was put on this stand to smokescreen you into believing that these were quacks and fakes, charlatans I believe was the expression used by Mr. Lazarus in his argument?

Oh, yes, don't forget Miss Ade, Grace Ade. She was the advertising manager of the Greater New York Federation of Churches. Is her understanding and her teaching—because she is a group leader—of the principles of the Saint Germain activity, of the I Am, contrary, or does it interfere with her work with the churches of New York City? It is entirely consistent. There is nothing inconceivable about this work when it is understood and when it is properly studied.

I don't think you gentlemen can possibly feel for one moment that any one of those individuals that was presented here on behalf of the defense was anything but an intelligent, human being. I don't think that you will feel that a number of the Gov-

ernment witnesses were anything but intelligent human beings, who had the right of free will, who had the right to leave the movement, to reject it if they wished.

You take Mrs. Schall again. Mrs. Schall is certainly an intelligent woman. Mrs. Schall said that she went into this work [920] because she was looking for something to aid her husband's blindness. She had tried theosophic readings, teachings; she had tried doctors; she had tried Christian Science. She was told to say, "I believe he is well. I believe he has his sight. He will get his sight," or words to that effect. But he didn't get his sight. And she went into the I Am lectures. Two months later her husband died. She frankly admited that perhaps it was because of her lack of understanding during that period of time that he did not regain his sight. He died blind, as he lived.

And yet Mrs. Schall is presented to you as one of the so-called victim witnesses who was not a member of the staff but simply a member of the lay public. She had no contact with the Ballards except in one meeting in Washington when she talked to Mrs. Ballard about Senator Schall's blindness. She is one of those alluded to in the indictment as being hypnotized into traveling great distances to hear these people. Yet when we come to the facts in the case, Mrs. Schall didn't travel great distances under any sense of hypnosis or under any persuasion or enticement. When Senator Schall died she went back to her home in Minnesota where she at-

tended some classse that were being held there. Then, according to her testimony, she moved to California. She moved to California, gentlemen. She was a widow. Her husband was gone. I can understand Mrs. Schall's attitude. I think you gentlemen can understand it, too. California is a lovely place to live. In eight weeks I have grown to become very fond of it, and it may be because possibly the Ballards are here that I am more fond of it.

Now, another lady you might call a victim witness is Mrs. Hill. She is another one that was induced to travel great distances at great expense to herself, as charged in this indictment. Mrs. Hill, the lovely lady that she was, was apparently a woman of ample means who could go to Florida in the wintertime and then, when she got tired of Florida she could come across the country to her ranch [921] somewhere up the state here, a ranch where she had a gold mine. She had other reasons to come to California other than the Ballards. You remember a discussion I had with her about the pronunciation of Ahwahnee. I didn't know anything about Ahwahnee. I know now. She had a ranch and a gold mine near Ahwahnee. That is the type of person the Government would have you believe is hypnotized into following or spending money on this activity.

Now, if this were a fraud scheme, gentlemen, why did these defendants let this big amount of money get away from them, the traveling costs of

Mrs. Hill and Mrs. Schall? Why didn't they grab it themselves? Why did they let the $190,000 go into radio work to spread the light of these teachings? Why didn't they grab it themselves? It would be just as easy, if the Government's theory of the case is correct, for these people to have put every single dime of this kind of money into their pockets. But no, as Mr. Sieber said from the stand, he told them they should get these teachings to the people, spread it, and Sieber, the bank president, is the man that took the Ballards out and started them on the road. Is he guilty of fraud because he told them that it would be more convenient for them to go to the people than the people to come to them? No! Mr. Sieber for the months he was engaged was paid according to the agreement he had with Mr. Ballard, a business man's agreement, under which Mr. Sieber, if it had been a fraud scheme, wouldn't have gotten as much, I can assure you.

Now, there were other witnesses in this case whom we don't think quite as well of. We weren't satisfied when the Government produced the lovely lady with the blonde hair, Mrs. Shinn. You recall her, I am sure. She testified on direct examination that her mother was, in effect, old and feeble, didn't speak English very good. That was why her mother wasn't here to tell about this glorious painting, this glorious painting that was painted in Brussels, Belgium, in 1915 during the German occupancy of Brussels [922] and was imported, rather, taken out

of the country under some special diplomatic permit or agreement with the German Government. I don't recall now what it was.

We wanted to find out the true facts of the situation. We felt that it was better to get the originator in here, even though we had to make her our own witness, than to take the word of a woman who, at the time of the occurrence related, was, I think, either 14, 15 or 16 years old.

Now, Mrs. Theresa de Carranza is named in this indictment as the originator and painter of this picture of Saint Germain painted by Charles Sindelar. We brought her in because we wanted to know something about it. We wanted to know whether Charles Sindelar was telling the truth when he said he painted this as a vision of Saint Germain or whether he had copied it from this picture, as the Government contends in subparagraph 13 of this indictment:

> "Whereas in truth and in fact the defendants well knew that said painting was copied from an existing picture painted approximately 20 years theretofore by Theresa de Carranza and that the reproductions were made for the purpose of sale."

You gent*l*men have seen both pictures. Of course, the only similarity is in the design behind the head. I think the explanation of that is entirely reasonable, and I think you remember it.

Now, when Mrs. Theresa de Carranza, the artist

whom I say we made our witness, was called in, she wasn't so feeble that we couldn't understand what she was talking about. As a matter of fact, she talked pretty well, according to my way of thinking. It wasn't a lack of English that was bothering us; it was trying to cut her off. We got along all right, as far as that is concerned, and she identified a photograph which we put in evidence and she said, "Yes, that is a reproduction of my picture." [923]

All right. I think most of you gentlemen got the significance of that situation. Here is the picture that Mrs. Theresa de Carranza said was a photograph of her picture which he painted in Brussels, Belgium, in 1915 and which was brought to this country in 1916.

Three ladies followed her on the stand, identified this picture as a reproduction of a picture that has been used in theosophical work, one of them said, since 1898 when she first saw that picture, and she saw constantly through the years. She was young, of course, at the time, but she saw it by constant repetition. Now, that is the situation which you gentlemen are called upon to determine. Did Mrs. Theresa de Carranza paint this picture? If she did, is this a copy of that picture, a copy made by Charles Sindelar? You can believe Charles Sindelar who said it was a painting of a vision in San Francisco, or you can believe Mrs. Theresa de Carranza that she painted this, and this is a copy. But

your eyes can't deceive you regardless of what the Government intends you to believe.

The only logical and reasonable inference that can be drawn from that situation is this: This is a reproduction, according to the evidence, of a picture that was used in esoteric work since 1898. According to what evidence we have here, it was seen in 1914 and it was seen early in 1916 by two ladies who were members of the esoteric group of the Theosophical Society at Pasadena. They stated they attended lectures here in Blanchard Hall in Los Angeles at that time and saw those pictures. The testimony on behalf of the Government and the testimony of Theresa de Carranza is that this picture was brought in in 1916. I don't know what Mrs. Theresa de Carranza was thinking about. I don't know where she got that picture. I don't know that it is even hers, from the testimony. Her name doesn't appear on it anywhere. My reasoning, and I submit that the only logical reasoning, is that that picture, [924] perhaps unconsciously, was copied by Mrs. de Carranza from this picture used in esoteric work and a picture of Saint Germain that has been known to the esoteric students for years.

Now, in the front part of the book "The Magic Presence" is a reproduction of this picture, and this picture is a reproduction of this picture. There is the Saint Germain picture that was brought out at the beginning of the Ballard work. That was the only picture known to the esoteric world as a picture of Saint Germain. It was an unpublished picture. The Ballards used it.

Later in 1935 Mr. Sindelar brought forth the picture of Saint Germain appearing to him, and Mr. Ballard said, "Yes, that is the picture of Saint Germain as I know him." The logical reasoning there is that this is a picture that was also known and used as a picture of Saint Germain by the esoteric world prior to the bringing forth of Mr. Ballard's experiences with Saint Germain. You will notice, of course, gentlemen, that in Mr. Lazarus' argument there was no reference made at all to the question of pictures, although the allegation stands forth very prominently in this indictment, that Mr. Sindelar, whereas, in truth and in fact, the defendants well knew, copied the picture of Theresa de Carranza.

Now, the next item of the indictment says that certain charts, phonograph records and articles sold by the defendants bestowed upon the purchasers great blessings and rewards in their aim to achieve salvation; whereas in truth and in fact the defendants had no foundation for said representations and well knew that said representations were false and fraudulent, and that said articles, charts and records had no ability to aid in achieving salvation.

How the Government has disproved any such contention, I don't know. Salvation and immortality are matters of the spirit. I am going to read to you a short excerpt which has appeared recently in the Reader's Digest. It is entitled "I believe in Immortality."

> "Are we immortal? Does the human spirit, [925] so precariously and briefly housed in a physical body, cease to be when that body ceases to be? Or does that soaring entity, the soul, once it has passed the gate of darkness, continue somewhere the challenging adventure which characterized its earth existence? No one knowns the answer, or can know, but we all have an equal right to choose on which of the two hypotheses we shall build our philosophy of life.
>
> "We constantly talk about a philosophy of life, but we rarely examine that philosophy of death on which so much present-day thought and action depend."

And yet we are charged here with trying to aid humanity, to achieve a state of consciousness, to achieve a state of salvation, a state of honesty and a patriotic devotion to the country. We have been denounced for teaching good. An attempt has been made to ridicule the abstenance of these people from liquor, from tobacco, from flesh foods, from excessive sexual activity, from the use of narcotics, serums. That is their belief. If they believe and are taught that they should follow certain prescribed dietary laws, natural laws, in their hope to make themselves better in this embodiment, and to achieve what you and I might call salvation, then it is up to them. It is entirely their privilege to think and believe and be taught as they desire.

Nobody says you must do these things, nobody says you must go to church; it is offered to them if they want to accept it, if they want to believe it. It is there for the people if they want it.

Has there been any showing in this case of any harm or any evil that has been perpetrated by these people? I say to you, gentlemen, I recognize none. I recognize only the good in man and [926] that good lives after him.

They have taught, in my opinion, nothing but good. And when Mrs. Schall asked me from the witness stand, when I was examining her, didn't I know these things, wasn't I an I Am student, my only thought then to the lady was, I am afraid I do not have the will or the ability to be a real I Am student. I think I am an I am student, and I think we are all after this case to some small measure perhaps, because I think it has brought home to us a realization that God is not a mirage, a Sunday go-to-meeting proposition, a consciousness that is only called upon in time of trouble and stress, but God to these people is an every day proposition. And they are taught to love God, not to fear Him. The very experiences in these books of Mr. Ballard's, the very experiences of his, teach certain principles and precepts which we might call a philosophy of life. The incident or occasion with a panther—one of the witness on the stand stated that that teaching is a teaching to overcome fear. Through that experience Mr. Ballard learned to overcome fear, which has been the destruction of mankind since the beginning.

Now we have the next specification in the indictment, that the Ballards shouldn't be critized, or they would be denounced and punished by ascended masters.

Gentlemen, I have attempted to predicate my argument on the belief that this matter is a cross between an educational and a religious activity. Basically it is religious because it is a philosophy, dealing with divine power; structurally it is educational. It is not different than the conduct of a seminar or a class in ethics or philosophy at our great universities. The Ballards are the lecturers, the students are the students. The books are the textbooks. You might call it the bible of this lecture course, just as the Koran is the bible of the Mohammedans, just as "Science and Health and the Key to the Scriptures" is the bible to the Christian Scientists. [927]

Now in the universities or in classrooms you are generally there because you paid a fee to enter, but because you paid that fee to enter doesn't give you the privilege to stand up and criticize a professor. I have taught school and I know that I never countenanced that, regardless of how whacky my own presentation of a subject was. And I will tell you, gentlemen, that when I was teaching school some of the stuff that I taught was pretty whacky.

An early incident in my own experience is where an associate instructor conducted a course that we all thought was crackpot, a course which in those days was thought to be socialistic. Social economics

was the subject. But regardless of how other members of the teaching staff, or how the students themselves—and there are many of them—had complained because the thing didn't sound right, the teachings were wrong according to their concept, but they didn't go into the classroom and criticize those teachings. They weren't permitted to. Now that gentleman that was conducting that course, he had great ideas on social democracy. That gentleman today occupies the high position in the Government of these United States. His name is Leon Henderson. You have all read the papers about his being the czar of prices in the United States. He is putting into effect some of the things that we thought were a little out-landish in 1922, but he has been allowed to experiment with it, and he is experimenting with them today, with the sanction of Congress and the sanction of the Government. I hope to God he works it out properly.

And I know that when the final hand writes, God will recognize that the writing of the Ballards has been a step in the direction of teaching the truth of existence, in close religion to His divinity, to His deity and to His spirit.

Now certainly they are not going to let people stand up and heckle them in these large classes. What kind of a situation do you [928] think that would be? They are not allowed to criticize. Certainly they shouldn't criticize them. But does that make it a fraud case because they have told people that they mustn't criticize them? It is too far fetched for my imagination.

Now, in connection with this indictment, I call the attention of you gentlemen to the fact that there are 11 counts now outstanding, on the mail fraud or substantive counts, and there is one count for conspiracy to do the things that are alleged in the other 11. Each count is a separate lawsuit. A conviction on one count is a conviction on a lawsuit. The same is true of an acquittal. An acquittal on 10 and a conviction on one is the same as finding them practically guilty on the whole business.

We feel that when you gentlemen have taken this case into the jury room, and after you have received the instructions from the Court, that you will weigh carefully all the substantial evidence in this case, that you will find that on all the substantial evidence of the case there has been no violation of the law, either on any one or all of the first 11 counts of this indictment, or under the conspiracy count, and that you will come forth and announce your verdict, and that verdict will be favorable, that is, a verdict of acquittal on all counts.

In closing, I want to close on the same note that my friend did yesterday, and that is, that there are five defendants in this case who are brought in because they originally believed in the Ballards and their sincerity and they have stayed with the Ballards and believe in their sincerity all these years. For the most part, they started at the same time with the Ballards that Mrs. Bliss did and others who do not here stand indicted.

Mrs. Bliss dropped out. She was an appointed messenger, the same as Bill Cassiere and Paul Stickell. The only difference—and she has testified that they taught the same thing as she did, in the same way, and that they all taught according to the Ballard [929] teachings—the only difference is that they have continued to believe.

Now, as to Miss Majerus, I am trying to find the reference that my friend made to her yesterday, she was the general factotum, I believe, or some such reference, at Chicago. She makes $125 a month tending to the office. I can't see for the life of me how you gentlemen can worry about that problem here very long. Miss Majerus is certainly not engaged, in my opinion, in any scheme, nor has she made any false representations.

The same is true of Mrs. Mundy. Mrs. Mundy has been a devotee, a follower, of a beloved leader. She has given of her time and her energy to helping that leader, just the same as that leader has given of her own time and energy to help humanity.

And I say to you, gentlemen, in closing, that there should be no difficulty in arriving at a decision promptly as to most of the defendants, and I know Mrs. Ballard subscribes to my thought that you should consider carefully, weigh the evidence, resolve all doubts that might exist in her favor, and bring in a verdict of acquittal, which will enable these people to go free from this court and free from the insidious charges of this indictment. [930]

ARGUMENT IN BEHALF OF THE DEFENDANTS

(Contd.)

Mr. Cannon: If the Court please, gentlemen for the prosecution and gentlemen of the Jury: This is something I have been dreading for eight weeks but oh so terribly the last few days. I am not going to be very long, I hope, and I know you hope. It has been suggested to me that I talk an hour. I am not going to talk that long if I finish what I have to say, and I may have to talk two hours; but I will talk only so long as I feel I can be of some assistance to the jury or the Court and to my clients.

I have tried a few cases, not many, but a few; and I suppose as often as a man tries cases, just that often are they always nervous about standing before a jury. Mr. Lazarus and some of the other gentlemen, particularly Mr. Lazarus, went to great lengths to compliment counsel. I don't know whether I should feel jealous of the position of my associates or not. I was not characterized as a member of a big firm, nor as having very much experience in practice, but that, gentlemen, doesn't mean anything. About this compliment of counsel: those are things we like to do for ourselves in the privacy of our own offices. One of the reasons it is done in court is this (and I am not charging *with* Mr. Lazarus with bad faith at all): But if we are so good as he says we are, then, of course, if he beats us he has done a particularly fine job;

and if he doesn't beat us, then he has been beaten by the best counsel there is. Now, we are not the best there is in the world. We don't claim to be. None of us claim that.

Mr. Lazarus, early in his argument, made a statement that I want to peg if I may right now lest there be some misunderstanding about it. Concerning the disagreement of this jury, he said this: "She has been fooling the people that have been before her and it [931] was her hope, no doubt, by these glib representations of hers and these distinctions between black magicians and powerful black magicians that she should fool at least one of you gentlemen because she only has to fool one in order to hang the jury."

Now by "hang the jury," of course, Mr. Lazarus meant to get a disagreement. None of us want to hang the jury yet. We come to you gentlemen with the flat proposition that we are not asking for a disagreement in this jury; we want a vindication of this case and we think we are entitled to it, and I am going to point out to you the little while I stand before you here some propositions, and I am going to put them down in language unmistakably clear to the prosecution and I am going to give them numbers. Then if you men, when you go into the jury room to deliberate, can convince yourselves beyond a reasonable doubt that the prosecution has established those propositions and can explain them to you, I want you to come out and convict them, and not convict them on one count. We want no

compromise, gentlemen. Convict them on all counts if you convict them at all. Those propositions I am going to lay down flatly in their laps and they can take them or leave them because after all, as the Court will instruct you gentlemen, the burden is on the prosecution, not upon the defense to make a defense.

Mr. Peterson has adverted to the fact that while under the theory of the law a man is cloaked with the presumption of innocence, we all know as a practical proposition that a person charged in a federal court goes onto that witness stand and comes before you men under a cloud, and I don't care how honest and sincere and virtuous and upright you are, a lawyer always has the advantage of a witness. I say that for the defense lawyers and I say that for the prosecution lawyers. A witness is always at a disadvantage on the witness stand and particularly so, gentlemen, when that person is a defendant. That is particularly so. We [932] have had in this case thrown at us with the greatest facility in the world charges of perjury by the prosecution, claiming that these witnesses have perjured themselves. They have been glib in their denunciations and so forth with the idea of befogging this issue, and I want to ask you gentlemen in all frankness who in this case has talked about the facts. Has it been the prosecution? Was that argument of Mr. Lazarus based upon the facts? He took the books of this movement—and we have admitted all the time and read them—and held them up to you

for ridicule and innuendo and suggestion and fears with respect to the honesty and integrity of these people. Who has talked about the witnesses? Who has talked about the facts? The defense! And that is what I am going to talk about now.

I have been on both sides of these cases as Mr. Lazarus said. I have been on the prosecution and I have been on the defense and I want to tell you right now, gentlemen, as you men know from your own experiences, the defense is a tough side. And why is it the tough side in a fraud case? Why, because fraud is the most ephemeral thing in the world. We sit here. A man charged with fraud never knows where that lightning is going to strike. It may strike anywhere. The slightest things that have occurred in a person's life during the period laid in this indictment may be dragged out into the open and construction put upon them, which we contend is not justified by the conditions as they then existed and not justified by the conditions as they now exist. Another reason it is tougher to defend a fraud case than it is to prosecute one: because we always know as a practical proposition that the defense doesn't have available to it that same large, powerful institution that can go out and subpena people from the highways and byways all over this country and put them on the witness stand before you. They frame the issues. The defense does not have that fine system of investigation, of which [933] there is none better, than the postal inspection service, to comb out these witnesses, to

make up jackets on them, on their cases, and hand it to a prosecution attorney. I know that because I have been on that side.

Then I want to ask one thing more for you to keep in mind, gentlemen. Can you tell me why, or will the prosecution tell me why, when the major activity of the Ballards was carried on in Los Angeles, as they say, where we spoke to thousands and thousands of people here and hundreds and hundreds of classes, why do they bring people from all over the United States and just a few witnesses from Los Angeles? There are two notable exceptions in this case where local witnesses are produced. One is Mr. Stover and one is Mrs. Adams. Those are the two notable exceptions of witnesses taken from Los Angeles.

By the way, I want to stop a minute on Mrs. Adams lest I forget. That is the lady that you remember who said she voluntarily appeared in this case, the other day in the hall spoke to the Government counsel and said she could testify in the case—not under subpoena. Then she said she went to this meeting where Mrs. Ballard, before thousands of people, pounded on the desk and said, "It is my pie. I am going to eat it because I like it."

That same witness, gentlemen, is the woman who said she went there—and I am quoting now—"to this meeting and made a donation in the belief that I am going to get it back in kind in direct proportion as I gave, more than I gave with interest."

Do you want to tell me you will send people to the penitentiary on such kind of testimony?

Now this man Stover is the man who testified he was a devoted follower of the Ballard for years and one night after a class he was in the music room at the Shrine Auditorium and that he overhead a conversation between someone whom he does not know. He said he did not take the trouble to see to whom Mrs. [934] Ballard was talking. He could not recognize the voice again if he heard it. He said nothing about the conversation for about four months after it occurred. Then he told it to someone who left the movement. The primary part, he said, was that something was said about "the larger the crowds, the greater the income."

Such a statement was supposed to have been made by Mrs. Ballard to someone, so he said, who was earnestly a follower of the Ballards; a fact which of itself shows it is improbable.

The witness voluntarily appeared at the office of the United States attorney and offered to testify in this case after this case had begun, and up to the time of hearing that conversation *she* was a devoted student. How do I know? Because he testified, gentlemen, that on that very night when he heard that conversation, "I was in the music room arranging a number in the way of a tribute dedicated to Mrs. Ballard," and Mrs. Ballard was supposed to have told this person who was a follower of theirs, a devoted student, "The bigger the crowd, the more money."

I say, gentlemen, if such a conversation occurred to a devoted student when those classes were then being attended by the thousands, that Mrs. Ballard ought to be acquitted on the grounds of insanity if she was engaged in a scheme to defraud. It is a fabrication pure and simple—not pure, but at least simple.

What about this movement? What kind of people does it produce? I want to call your attention to the people that went on the witness stand on both sides of the case, the I Am students. They are positive! They are clear! They have self-respect! They sit on the witness stand and testify in a manner such as you men have never seen witnesses testify before. Has that movement done anything for them? Do I condemn some of these people because they have fallen away from this particular movement? I won't hurl an accusation to the effect they are liars, prevaricators, and perjurors. Why, no! The most devoted people, gentlemen, often- [935] times have their moments of doubt. Jesus Himself had his moment of doubt when He was in the Garden of Gethsemane, knowing His divine mission. He knelt before His father and asked His father if it was possible to allow this cup to pass from Him, pass by Him, without His drinking it. He sweat drops of blood because of His momentary weaknesses. Peter who saw manifestations and miracles of the Savior such as none of the rest saw in a moment of doubt, in a moment of misunderstanding and weakness denied his Lord

three times. These people here who testified against us, I think, were earnest and sincere. Everybody admits they were when they were in the movement. They have had their moments of doubt, and those moments of doubt have finally turned into bitterness against the defendants, but I don't call them perjurors, prevaricators, and liars. We can show you here, gentlemen, all of these witnesses concerning whom you have no doubt as to their sincerity and belief and who at the time, when there was no reason to mislead or misrepresent, wrote letters out of abundance of their feeling as to what had occurred to them. You look at the defendants' exhibits lettered in this case from those various witnesses. I don't condemn them for another reason. Anybody who has ever tasted the sweetness of the experience which Mrs. Ferguson or which Mr. Ferguson—Mrs. Ferguson said it wasn't she; that it was her husband that wrote this letter—but Mr. Ferguson sat in the courtroom, and they wanted me to tell what page that was on yesterday. It was page 4480 of the transcript.

Mr. Lazarus: The only testimony in this case was that of Louise Majerus who said Mr. Ferguson was in the courtroom. There is no testimony in this record to otherwise show that Mr. Ferguson was in the courtroom. I think Mr. Cannon should be corrected in that respect.

Mr. Cannon: I will read the transcript, gentlemen. She is under oath and she testified to it several days ago when the [936] Government had a

daily transcript of it. They could have gotten her back here. They are spending your money and my money to bring these witnesses from Miami, Florida, of the type of Wilbur Curtis Smith, and all the way from Seattle, Mrs. Fowler, and Miss Majerus testified several days ago under oath this way:

"Q. Do you know, Miss Majerus, Mr. and Mrs. Ferguson of Chicago?

"A. I do.

"Q. You were here when Mrs. Ferguson testified?

"A. I was.

"Q. Did you see Mr. Ferguson here then?

"A. I did.

"Q. In this courtroom?

"A. Yes."

But they put Mrs. Ferguson on the stand, gentlemen, and when I would get her with a letter that looked a little bad for them, according to their theory of the case—I don't think it looked bad at all—then Mrs. Ferguson jumped back and forth and said, "Oh, it was my husband who wrote that." The same thing happened with the Mr. D. D. Fowler letter. There was a letter here that I wanted to get into evidence, and which I finally did, addressed to Mr. D. D. Fowler, not Mrs. but Mr. D. D. Fowler. Oh, her husband's name was different than D. D. Fowler. She had an office in the Orpheum Building, and this letter I produced went to the Orpheum Building addressed to Mr. D. Fowler. She said, "I didn't get it. It went to someone

else." That is the type of testimony we have in this case, gentlemen. I will stop a moment or two.

Speaking of these persons, I say who have had a transcendent experience such as Mrs. Fowler spoke about—even though she is bitter now—and have tasted for even an instant the things of which she wrote at this time, has been compensated, [937] gentlemen, beyond measure and beyond price.

William says this for the Fergusons (this is the one she said she knew had been written, but her husband wrote it. I confronted her with that):

"Tuesday, April 1, 1935.

"* * *

"The outpouring of DIVINE LOVE, POWER, AND WISDOM on those blessed students of THE LIGHT in Toledo was and is nothing less than MIRACULOUS. Greater peace, harmony, and acceptance could not be manifest than was there. The place of meeting, the care for our comfort and all were all PERFECT. 68 were qualified to enter into the fellowship of THE ASCENDED MASTERS—it was GLORIOUS."

"We were most highly blest in having JESUS stand by us the last two nights—HE was seen by three in the audience on the last night —Mrs. Pinkerton" (referring to Mrs. Pinkerton who testified in this case) "was one who saw Him. And Mrs. Ferguson and I were seen to be encompassed in the golden light at the same time. We hope you saw it too."

This occurrence happened.

Now, I say people who have tasted for even an instant in times of sorrow or distress or exhiliration or happiness or the ordinary walks of life have a faith, gentlemen, in the efficacy of belief of a higher being, those people are compensated beyond money and beyond price.

Did the Ballards hypnotize her to say that? Did the Ballards hypnotize Mrs. Pinkerton to say she was in the audience and she saw Jesus? And how else would the Fergusons know except what Mrs. Pinkerton told her?

Then again on May 7, 1935, this same witness writes: [938]

> "A shaft of light shone over us and we were surrounded with a golden light throughout the evening. This blessed one was so shaken with the power that he could not hold himself quiet until a shaft of light shone directly toward him and at its end the glorious Saint Germain—this was responded to by 'Speak Lord for thy servant heareth'—and the light ball at the end of the shaft just in front of him exploded and at once the greatest peace came over him. His joy is beyond bounds. His courage is dauntless and like Peter—I feel sure he will be a great power in bringing C. S. into THE MAJESTIC I AM—he stands as a rock on whatever he knows. And they all have been students of 'Unveiled Mysteries' and 'Teachings of the Masters of the Far East' and have ACCEPTED THEM AS TRUTH."

Now, Mr. Lazarus suggested the other day that we were going to hear a lot of biblical quotations. Well, I am glad he said that. I am a little loath to quote the Bible to you. I won't attempt to quote it altogether out of my own mind—I am no Bible student either—but I am a little afraid to quote it. Therefore, I will read a few passages adverted to by Mr. Lazarus.

The reasons I am afraid to quote it is because of the experience Judge Rush, a well-known lawyer here in Los Angeles, had in his early practice here in Los Angeles.

He said to me one day in San Diego, "Cannon, I never quote the Bible to the jury, and the reason I don't quote the Bible to the jury is because somebody trying a murder case in the state court where you have men and women on the jury, my associate got up and quoted the Bible—they were defending a man charged with murder. He quoted the Bible, this associate of Judge Rush. The jury went out and stayed two days and a half, eleven to one for [939] acquittal. When they finally came in the court discharged them." He didn't hang them, gentlemen, but he discharged them for the disagreement. They had asked eleven to one for acquittal and they stood that way for two and a half days. They asked them why it was, and some lady on the jury, who was the twelfth juror, said, "Because that young man who defended the case misquoted God's holy words." So I never quote it, gentlemen. I read it, and I am going to read you a few passages.

By the way, I want to digress here for a moment. This is the last say we are going to get. Do I hear you say "Thank goodness"? This is the last say the defendants are going to get, so if I miquote this evidence or misstate the evidence or misquote these matters I am going to advert to, I want you to ask me about it. I want counsel to ask me about it, and I want the Court to ask me about it if he feels disposed.

Now, Mr. Neukom said at the beginning that this wasn't going to be a heresy trial. I really hoped not, but Mr. Lazarus' argument, it seems to me, brought this case into the category of a heresy trial. I say that in respect to Mr. Lazarus. I say that because of the ridicule and the innuendo which he seeks to draw from these books as to these people's beliefs. My gracious, the best criterion upon which you have to determine the guilt or innocence of these defendants is furnished by the defense. If people like Mrs. Hill, Mrs. Bliss, Mrs. Rogers, even Pat Crouse, Mrs. LaFerrera and these other numerous witnesses, earnestly believed it, gentlemen, when they were with them day after day, sleeping in the same apartment with the Ballards, seeing them on the platform and then they believed it, gentlemen: Would the prosecution have you retroject yourselves back over a period from 1932, testified to by Mrs. Bliss, to 1939, when she was still with them, have you retroject yourselves back and say, "Those things which she heard and which she believed are untrue and not worthy of belief even [940] by the defendants."

Here is another strange thing, too. This is not one of my nine or ten propositions. I am going to give you some others later and number them. Another strange thing, too: All of these so-called incriminating statements that have been uttered like Donald saying his mother was the meanest person on earth, and like this statement that this Pinkerton girl testified to, which her mother said she repeated to her the day after the occurrence, "How long are the people going to put up with this bunk?" I say the strange thing about it is that if those statements were actually made as testified to by the prosecution, why on earth did those people to whom they were made remain in the movement months and months afterwards, and some of them years after those statements were made?

Bear in mind this thing, too: How did this all come about, this prosecution? In 1932—we have it from the witness here, Mr. Pursell—certain letters were written to a Miss Killen. I hope there is nothing suggestive in the name. In those letters certain statements were made with respect to the books that were to be published and money was asked for. Mr. Pursell called for Mr. Ballard, and Mrs. Ballard came in and he had a long talk with her. Nothing was done about it then.

Then the Government, a little later on, dipped—and I don't say this with any acrimony or bitterness—right into our own organization and took out of the organization certain things, interrogated them at great length, people who had the greatest inti-

macy with us—I mentioned them before—LaFerrera, Mr. and Mrs. Rogers, Crouse, Mrs. Terry and the others, and Miss McGinniss, the bookkeeper. Then after that they get an indictment in this case and they charge that Mr. Ballard was never out at Mount Shasta at all. We go on to our defense and Mrs. Ballard introduces letters, the so-called Shasta letters which counsel stipulated with me in the record were introduced in the former [941] trial in partial refutation of the charge then made that Mr. Ballard was not at Mount Shasta. The Government backs away from that——

They grab off those Shasta letters in the former trial and they build up a proposition that they couldn't sustain, and they use it in this case, but the things rise up now and damn them; and after they get all of that, what do they come up with in this case? They come up with these things which Mr. Lazarus says are the badges of fraud: that Donald Ballard was drinking soda pop and reading Popular Mechanics; that Mrs. Ballard had lemonade or orange juice or pineapple juice down before the class that Wilbur Smith testified to; that Mr. Ballard had some trouble concerning which he asked a remedy at Mount Shasta. That is a badge of fraud. That Mr. Ballard was taking laxatives. They even wanted to know the kind, and they told him it was Feenamint. That Mrs. Ballard took a few cough drops in Miami, Florida, which showed that she wasn't a god-like being. That Donald Ballard called his mother "the meanest woman on

earth." Those are your badges of fraud, gentlemen.

Then they say we didn't use the Bible. In one breath they say we didn't use it, and in the next breath they say we perverted it. If they now say we didn't use it, I will just cite to you one instance, and you people take it to your juryroom and look at it. I don't care whether you believe Cassiere or whether you don't. He testified that the one card—and you men examined it and counted the number of scriptural quotations on it—that he made over a period of four or five years. He made some on this trial, you bet your life, and so would I if I was charged with a fraud case. I would make every note I could to help me out on the witness stand. And then I would tell frankly, like Mr. Cassiere did, that he made them for the purpose of the trial. [942] But on the other card that he used for four or five years, you men can look at it, it is in evidence, and it shows the numerous Biblical quotations used.

Their own witness, Mrs. Ferguson—you will remember I took up with her this outline of a meeting that her husband held, and it showed about scriptural quotations, and you had dozens of them on there that Mr. Ferguson used, and I asked if he was following the instructions given by the Ballards, and she said yes.

Now, I am going to quote a little Bible to you. Mr. Lazarus said that I was going to quote a lot of it, but I just want to show you some of the things that he pointed out as being badges of fraud,

so far as these defendants are concerned, I am going to cite enough Biblical citations to meet the Biblical references made by Mr. Lazarus.

He initiated them. They have chosen that battleground of the Bible, and we are willing to meet them on that battleground. They can choose their weapons, they can choose their time, they can choose their place, and we have endeavored to meet it.

I also want to use the Bible because I want to use language which we all can understand, and I also want to use language which I think even counsel will not say is colored by any influence of this trial. I want to take it from an irrefutable source, from the Holy Scriptures, and I want to use them also for the purpose of giving to you generally accepted philosophies of life.

At the time those Biblical quotations were used, or for years afterwards, gentlemen, when they were first uttered—because the earliest gospel wasn't written until 40 years after the passage of the Savior, and that was Luke's—and I say, for years after they were written those things were claimed to be as blasphemous and as untrue and as worthy of death as are these [943] statements here.

Now, one other thing before I mention that again: In using these Biblical quotations, I am doing it in answer to Mr. Lazarus' suggestions, and also because—but with this very distinct understanding, and don't let Mr. Neukom, in his adroitness, let you say that I said that Mrs. Ballard was on a parity with Jesus Christ. She never said so, never has claimed so, doesn't claim so now, nor do I.

Mr. Lazarus first finds fault with Mrs. Ballard's statement that she is a part of the Goddess of Justice—page 4588 in the transcript—I won't read it because I won't have the time, and he just yelled that to the high heavens, because—well, I will, too, read it, just for fun.

He reads from the book:

> "Now while you are standing, I am going to say something to you that may sound somewhat startling to the close associates of the Messengers. The body of this Messenger is a part of myself. The body of your beloeved Lotus is a part of the Goddess of Justice."

Then he says:

> "Now, when Mrs. Ballard was confronted by that, she said, 'Well, I am under a particular aura of the Goddess of Justice and thus take on some of the attributes.'"

And he ridicules that to the high heavens.

What about the Bible? Take the 17th chapter of John. Mr. Lazarus may not understand this language, but I understand it, and you do too, as to her being a part and taking on the attributes of these ascended masters.

The Lord at that time was praying to His father, and *he* said this, speaking of His disciples: [944]

> "Neither pray I for these alone, but for them also which shall be on me through their word;
>
> "That they all may be one; as thou, Father, art in me, and I in thee, but they also may be

one in us: that the world may believe that thou hast sent me.

"And the glory which thou gavest me I have given them; that they may be one, even as we are one:"

That isn't so ridiculous.

He next finds fault with the hope held out to these people that one day they should see the ascended masters in a group. Does Mr. Lazarus find fault with the statement in Isaiah, 40th chapter, where it says that when that time shall come all flesh shall see the glory of the Lord together? In Thessalonians, when Paul speaks about those who are alive at the coming of the Master Jesus, they shall be caught up in a body to greet him? Is that a far-fetched idea or philosophy of life? Is that a fabrication? Is it built out of the whole cloth to defraud and delude and deceive these people?

Then he finds fault with the teaching that one should keep to himself those personal experiences that seem miraculous. And I want to read that to you because that is a classic.

He is quoting first from the book. He says:

"It is Jesus' and Saint Germain's request that those whose inner sight is opened refrain from telling others what they see; as each individual is expected to keep his or her personal experiences guarded within each one's own heart as a sacred, silent secret gift to such a student."

Then Mr. Lazarus argues this—I am quoting from page 4641: [945]

> "The reason for that is obvious, gentlemen," so he said. "If you don't tell people what you don't see and you don't hear from them what they don't see or hear, again you think there is something within yourself that keeps you from maintaining complete harmony, and the other students are having these transcendent blessings that the Ballards assured them they can have, but that the students who were not having them just hadn't quite reached the point where they got harmony enough to realize those experiences themselves."

I think that is where he ought to put in this simile about a dog chasing its tail. Do you know what that means? Neither do I.

In one breath he tells you that one of the badges of fraud in this case is that the Ballards perpetuated this fraud by telling of miraculous things, and in another breath he tells you that they perpetuated the fraud by telling other people not to tell them.

Will Mr. Lazarus say that Jesus was a faker because he told the man who was deaf and tongue-tied, after He had loosed his tongue and opened his ears: "And straightaway his ears opened and the string of his tongue was loosed, and he spake plainly and he charged them that they should tell no man"?

Again He healed a blind man and his sight was restored and he saw every man clearly, and I quote:

"And He sent him away to his house, saying, neither go into the town, nor tell it to any in the town."

Again I quote the transfiguration of the Savior:

"And as they came down from the mountain, He charged them that they should tell no man what things they had seen, tell the Son of man were risen from the [946] dead."

And again, about the leper:

"And He put forth His hand and touched him, saying, I will: be thou clean. And immediately the leprosy departed from him.

"And He charged him to tell no man."

Speaking of the little girl that He raised from the dead.

"And He put them all out and He took her by the hand, and called, saying, maid, arise.

"And her spirit came again, and she arose straightway: and He commanded to give her meat.

"And her parents were astonished that He charged them that they should tell no man what was done."

Is that a badge of fraud, to keep those transcendent experiences to yourself? And, after all, a few of these people did tell them.

Now, then, Mr. Lazarus said, I think in rather a contemptuous way, on page 4602, why don't we

produce some people here that have been healed and some people that have precipitated something? We did. They did. But that same thing is eloquent—I am going to point that out in a minute—eloquently pointed out in the Scriptures where the disciples came to the Savior and said: "Show us a sign and we will believe."

If we could have had somebody come in here and precipitate a ten-dollar bill, or something else, why maybe that is the kind of sign Mr. Lazarus wanted. But you have people who actually testified to their healings. Mr. Baxter, the man who was in the civil service, whatever that means—and why they asked that question I will be blessed if I know—that man who was in the civil service, Department of Agriculture, testified that his sight was practically gone from one eye and through the application of [947] the law he was able to see without his glasses.

Now maybe the law didn't do it, but he sees just as well whether it did or didn't. Is the experience any less real, gentlemen? Is the benefit to Mr. Baxter any less tangible and valuable because he may have imagined it came about through that source? It is just as real to him as could be.

And Mrs. Bliss, and Mrs. Hill, and Mrs. Pinkerton, all testified as to the benefits they had received. And if you don't believe me, let counsel ask me and I will point out in the record, and if you don't believe me, you look at the exhibits we offered in evidence from these people written at the time. They are all lettered, and you can't miss them.

Mr. Lazarus: I ask you, Mr. Cannon, to tell us what benefits were testified to by those various witnesses you named, similar to those set forth in the books relative to cancer, tumors, and other things.

Mr. Cannon: Not that.

Mr. Lazarus: Show me what they were healed of.

Mr. Neukom: I will ask you, if you want a question: You find any witness that the Government produced in this court here that was cured of all the diseases that Mr. Lavett, the woman who didn't know what hypochondria was. [948]

Mr. Cannon: I am glad counsel mentioned that. She is the woman who was the mother of seven children, who got on the stand and told about the things that had come to her. She had four children, I think, when she first came into the movement. She had a lot of ailments. There was a string of them as long as your arm. And she said that through her study of the law and the application of the principles she was made well from them. She believed it.

She then went to work and had three more children, as I remember the number. And she still was all right. And then counsel asked her, with a contemptuous smile, "Do you know what a hypochondriac is?"

That thing is just as real to her as your arm is to you.

And do you mean to tell me that Mr. Lovett didn't believe, and doesn't believe, that his Mighty I Am Presence stopped his car from going into the ditch on the way here? Why even the callousness of coun-

sel for the prosecution I think would say they didn't believe he didn't believe it.

And if people believe those things, if people can find in this thing some solace, some reason for existence, and have it for only a few minutes, it is worth a lot. People want things to hold to, gentlemen.

I will point out their star witness' statement with respect to herself.

May I have Mrs. Bliss' "Unveiled Mysteries?"

(The volume referred to was passed to counsel.)

Mr. Cannon: I was going to do this at another place in the argument, if you can call this an argument.

Mrs. Bliss. This is the book that she herself produced here, the first edition of "Unveiled Mysteries." It has some glorious things written in it in her own handwriting. I don't [949] condemn her for it. They are glorious things. And here is one of them.

She underscores it in purple ink, speaking of this precipitated drink.

> "It (speaknig of the drink) is subject to our conscious control and direction, willingly obedient, when we Love enough, (and she has underscored that) because all the Universe obeys the behest of Love. Whatsoever I desire manifests itself, when I command in Love. I help out the cup, and that which I desired for you appeared.

"'See! I have but to hold out my hand and, if I wish to use gold—gold is here.' Instantly there lay in his palm a disc about the size of a ten-dollar gold piece.

"'I see within you a certain Inner understanding of the Great Law, but you are not outwardly aware of It enough to produce that which you desire direct from the Omnipresent Universal Supply. (Now she has marked the rest of this, Mrs. Bliss has, that I am reading to you) You have desired to see something of this kind so intensely, so honestly, and so determinedly, it could no longer be withheld from you.'"

And Mrs. Bliss writes, in her own handwriting: "So did I and it was not withheld."

Tell me she didn't get benefits out of it!

There are a lot of lovely things in here. I want you to take it into the jury room and look at it. Some of the things she has written in here in her own handwriting. And this is where the Government didn't want to admit that it was her handwriting, and I was going to call a handwriting expert, and then they finally admitted and said, "Yes, she wrote it." [950]

She writes here, in her own handwriting:

"Gold is the precipitation of the great central sun. Gold is a symbol of Christ, the essence of the great central sun."

Then she writes again:

"Keep your face to the sunshine and the

shadows will fall behind you. Never go ahead of God. Wait upon the Lord. Your needs not your wants (and she has underscored the word "wants") are granted unto you."

But let's hurry along.

Then Mr. Lazarus apparently forgot about saying, why didn't they precipitate this gold? Why didn't they do thus and so, rather than get some money from these people? I would like to read you his language, and I will if you want me to. He asked why they didn't precipitate the gold and get everything from the universal presence if they could do all these various things, and he forgot, apparently, that glorious passage of the Savior with respect to the grain of a mustard seed when Mr. Lazarus read: "You can precipitate this gold when once that foolish questioning doubt has been removed." That was in the books.

And the Lord said the same thing virtually, and I quote the Bible:

"Then came the disciples to Jesus apart, and said, why could not we cast him out?

"And Jesus said unto them, because of your unbelief; for verily I say unto you, if we have faith as a grain of mustard seed, ye shall say unto this mountain, remove hence to yonder place; and it shall remove; and nothing shall be impossible to you." [951]

Then Mr. Lazarus, speaking of the ascension, reads "The Voice" magazine in a rather—I think

a very sneering sort of a way—and he said this, speaking of the ascension about the gravity of the earth:

> "* * * the gravity pull of earth can no longer affect it. The body rises in the atmosphere and follows the thought, going instantly wherever the individual desires. By proper application the individual can release into and through his body the Light needed to increase the vibratory action to the point where the body can rise into the air and become invisible or visible as the Ascended Masters are able to do."

Then Mr. [illegible], to cap that climax, turns to Donald and says:

> "That sounds as though it came from Donald Ballard and his Popular Mechanics."

Not at all. It came from the Bible. I can read it to you.

> "And while they looked steadfastly toward heaven as He went up, behold, two men stood by them in white apparel;
>
> "Which also said, ye men of Galilee, why stand ye gazing up into heaven? This same Jesus, which is taken up from you into heaven, shall so come in like manner as ye have seen him go into heaven."

It is also taken from the Old Testament, not from Donald Ballard and his Popular Mechanics.

In the Old Testament, speaking of Elisha and Eli-

jah, Elisha asked Elijah to come to him twice or thrice, speaking to the spirit that Elijah had and Elisha said something to the effect that if you see the light as I lead you, or something, you will know it will be a sign unto you that my spirit [952] will be multiplied in you.

Then it said in the Old Testament, in II Kings:

> "And it came to pass, as they still went on, and talked that, behold, there appeared a chariot of fire, and horses of fire, and parted them both asunder; and Elijah went up by a whirlwind into heaven."

Then about passing through solid substances, he ridicules that. I call your attention to the 20th chapter of Matthew, where you remember the Lord, after His resurrection, after the resurrection of Jesus, came into the supper room when 10 of his disciples were present, and the gospels say very distinctly "The door was shut and Christ appeared to them. He showed them His body, and told them to behold His resurrected person." And Thomas wouldn't believe that which they told him about it, so in the chapter, the 20th chapter of Matthew—this is about passing through solid substances—again when Thomas was present the writer of the gospel significantly says again, "And the door was shut and the Savior appeared to them again and told Thomas to feel His hands, the prints in his hands, and the wound in His side."

Next Mr. Lazarus speaks about Mrs. Ballard having a common cold, and he speaks of this nearly ascended person having a common cold and having to have some lemon juice or something, and he says this:

> "* * * it is fraud when Mrs. Ballard collects love gifts and sells books on the basis of a formula such as that, among other things, and at the same time herself realizes that she, the accredited messenger of the ascended masters, is subject to such a common ailment as colds."

Why the Lord himself, the Lord Jesus Christ, as an im- [953] mortal being, or as the Son of God, hungered and was weary and wept.

Does that take from his divinity at all? And bear in mind this passage too, gentlemen, which I must advert to—Mrs. Ballard has never claimed perfection. The books have said with respect to the law that no mistakes were made, but Mrs. Ballard never claimed perfection at any time, and the Savior himself didn't claim perfection at the beginning because:

> "Though he were a son, yet learned he obedience by the things which he suffered;
>
> "And being made perfect, he became the author of eternal salvation unto all them that obeyed him."

It is a matter, as Mr. Boerrigter said on this witness stand, of learning the law step by step, and when he arrived at that stage spoken of in the books,

that all questioning doubt is gone, then nothing shall be impossible to him.

I can't help but just remarking here for the moment, as much feeling as we have in this case—and we are all tense on it; there is no question about it; it takes something out of a person to try a lawsuit like this. You men have worked at it a lot, but we get paid for it, you men don't—very little. But it takes something out of a person to think that through something you may do or fail to do somebody's liberty may be jeopardized. But I say no matter how partisan we become, it doesn't seem to me that we are justified in speaking irreverently of things that have some real significance, real sacredness, to people. Mr. Lazarus rather ridiculed the idea that Mr. Cassiere should say he didn't want anybody to touch that book of his. That, to your minds, might be foolish. It may be altogether foolish to think that somebody touching one of your books would contaminate it. Now, I am not so sure it is foolish. We all know there are sacred things in the various churches that have [954] a certain significance to you that you don't want handled by people. Mr. Cassiere resented it. Mr. Lazarus rather felt contempt for him in that and he picked the thing up. I don't say you should turn these people loose for that, but I say partisanship in a case doesn't go that far.

Then he speaks of the Lord Jesus Christ in this language on page 4638 of his argument, that "Jesus

was made the prime book plugger for the Ballards." I say that is blasphemy.

Now, I am going to just lay down a few propositions. These are the ones I was going to number. I am going to be brief, too. I want the prosecution to explain to you, if they can, the utter falsity of Max Ysi's statement that he created the phrase "The Mighty I Am Presence." If they don't think he said that, I will point it out in the record. He testified he coined that phrase and the way it was set up, the way it was printed.

I also want them to explain to you, if they can, Mrs. Bliss' attempted corroboration of that statement, that she did not hear that phrase used at any time until after the Ballards left Chicago in the fall of 1934. Now, have them explain that to you, if they can, in the face of the Killen letters, Exhibits 119 and 120, dated May 5, 1933, and July 6, 1933, and the letter to Mrs. Bliss herself where the phrase was used exactly as printed in the books, on August 21, 1933. That is my first proposition.

My second one: Have them explain to you, if they will, the utter falsity of Dr. Cottam's testimony as to his having suggested Christ being in this picture. Dr. Cottam said ,"When I went to their lecture I told Mr. Ballard"—I am paraphrasing—"I told him, 'Here, you are in a Christian country. You had better put Christ at the head of this or else you won't get very far.' "

"I never heard," he says, "I never heard before that [955] date the name of Christ used in the lec-

tures, never had seen his picture on the stand, never heard any reference to him at all."

He said—and I wanted to get that definite, so you remember I pinned him down to the exact day he first contacted the Ballards, lectures or otherwise, and he said May 2, 1935. Now, I ask them to explain it to you in the face of these facts: In the face of Exhibit 96 introduced by Max Gysi—luckily it is dated; it is April 21, 1935—which is the pamphlet with respect to selling the Jesus pictures that she made so much fuss about; and also in the face of Exhibit 97 of the same date, April 21, 1935, before Dr. Cottam ever heard of them. Jesus was in the picture because they were selling his pictures.

Then I also ask them to explain the falsity of Dr. Cottam's statement in the face of Exhibit J. That was the pamphlet that was gotten out and published showing that Dr. Cottam was going to talk on craneology, whatever that is, on May 7, 1935, five days after he first met the Ballards; and on the back of that, strangely enough, three books are advertised as having then been published, already published by the Ballards, "Unveiled Mysteries," "The Magic Presence," "The I Am Discourses." There is the picture in that published book before Dr. Cottam ever met the Ballards at all. (Exhibiting picture) Yet he injected the whole thing in there. He got up and solemly swore that the next time he went to a lecture he saw the picture of Jesus on the stand which was the small one. He said, "You better get a big one," and sure enough,

the very next time there was a big one there. Why, it is ridiculous!

Now, ask them also—this is my third proposition—about their failure to produce Mrs. de Carranza, the lady who painted this picture of Saint Germain, but only her daughter. Also ask them how it was that Mrs. de Carranza identified the [956] picture I showed her which had been shown since 1899. She said it was the same picture. I want to read you a little bit of her testimony, because I think it is illuminating. I won't bore you long, I hope.

When they asked Mrs. Shinn about her mother, Mr. Neukom or Mr. Lazarus—whoever it was that talked about her mother—said, "She is an old lady, isn't she?" Why, I expected her to come in here on crutches and we would have to wheel her in. No! she was pretty spry and pretty smart. They didn't produce her because—well, I don't know why. She lived out here on Third Avenue for 13 years. It didn't take me long to dig her up and I am not smart, either.

I showed her this photograph and asked her this question:

"Now, when did you first see this picture, though, that I am showing you a copy of?

"A. The very first time I see a mental picture and I paint it from my imagination."

"Yes, I painted it from my imagination and I got those letters from the Egyptian letter, Latin sentences.

"Q. Oh, you didn't put those characters back of the picture except as you copied them from some book, is that right?

"A. Well, I know them. I know them as Rosicrucian and I had the idea to write it here. It was pretty to put those things around.

"Q. It was pretty to put those things around?

"A. Yes, and that thing on the top."

That is the scroll. I am coming to that in a minute.

"Q. Did you copy those letters from some place?

"A. Yes, from the Larouse in Belgium, a thick book, the Encyclopedia LaRouse. And I saw those letters and they were pretty and I put them in my picture." [957]

I want to digress a minute. If she didn't see that picture of Saint Germain in that encyclopedia, why, it seems odd to fill in the back of that picture, doesn't it? The whole thing is that that picture was in that encyclopedia. It wasn't painted by her at all.

I am going over to page 4004. Not a word has been said to this lady about Saint Germain in all this examination and she was the first witness on the stand that morning, so she heard nothing about Saint Germain. Then these questions were asked and she gave these answers:

"Q. Who is that man you painted?

"A. Well, I don't know.

"Q. What did you call him?

"A. What?

"Q. What did you call him?

"A. I don't call him the Count of Saint Germain."

Then I asked this question:

"Q. Who told you that these characters were Egyptian? A. In the book.

"Q. When was that?

"A. October 1916."

This is by Mr. Neukom:

"Q. And you thought those letters looked pretty and you put them there beside your picture? A. Yes.

Then I asked her some questions on page 4014:

"Q. When did you first become a Rosicrucian?

"A. Well, when the Society Theosophical of Rosicrucian in Belgium, when I went there first."

Then I skip:

"Q. That was before 1914? A. Yes.

[958]

"Q. And did you ever see the scroll in the Rosicrucian Society in Belgium? A. No.

"Q. Why do you say, then, that this is a Rosicrucian symbol? A. Because it was.

"Q. How do you know if you never saw it?

"A. I think it was.

"Q. How do you know if you never saw it in the Rosicrucian? A. What?

"Q. Do you understand my question?

"A. No, I did not see it.

"Q. You say that this scroll at the top of this Government's Exhibit 201 is a Rosicrucian scroll, is that right?

"A. Yes, or an Egyptian, because the wings are Egyptian in the center, the cross in the center is Rosicrucian.

"Q. Now, when did you first see a Rosicrucian cross?

"A. I never seen it. I don't know. I don't remember. When I paint that, there was nothing in front of me and I painted it on there."

Then I asked her again:

"Q. Where did you get the scroll and the cross from?

"A. I don't remember. I don't know. When I painted it, I have not anything in front of me. I have not that in front of it. Maybe I invented it. I don't know.

"Q. I am talking about this scroll. Where did you get that?

"A. I don't know if I saw it some place or I invented it."

Mr. Cannon: Now, gentlemen, bearing in mind that the prosecution has the burden of proof in this case, and by that [959] I mean the necessity of

establishing this case, the truth of these charges beyond a reasonable doubt before you can find them guilty, would you prefer to take that testimony of Mrs. de Carranza or would you prefer to take the testimony of Mr. Sindelar, his explanation of his putting those characters back of that picture, to the effect that Mrs. Ballard told him that, that the information was that characters of that kind always appeared back of the ascended masters in theosophical work?

Now, my fourth proposition is to ask the prosecution to explain to you the presence in this courtroom of letters produced through Mrs. Terry from the personal confidential file of communications of Mrs. Ballard to her son and to her daughter-in-law, and I ask that in conjunction with the next two propositions I am going to ask them to answer for us, and particularly do I make the inquiry with respect to those leters which Mrs. Terry produced addressed to Donald, "Dear Donnie," from Mrs. Ballard and the other personal communications, and ask you this simple question: Were those letters extracted by Mrs. Terry for some ulterior purpose? Were they kept here by her all of this time and then produced in court for some ulterior purpose and in some attempt to justify, if it can be justified, these clandestine midnight meetings of Marjorie, Donald's wife, and Pat Crouse, the confidential, close personal friend of Mr. Ballard?

Furthermore, I want the Government to show us, if they can, even the slightest kind of evidence of

Donald's extravagance or spendthrift ideas at any other time except when he was living with Marjorie Ballard, who was eight years his senior, and when his personal mail was being perused by his mother-in-law and extracted and held here for the prosecution. That is when the extravagance occurred, gentlemen. Donald married her when he was 18 years old, and yet Mr. Lazarus will tell you, [960] with a big fanfare, that he did it out of righteous desire because Saint Germain commanded it. It is a fabrication, gentlemen.

Now, I also want them to explain to you the presence here of those secret, confidential files extracted by Pat Crouse. Where did they come from? If Pat Crouse was the paragon of virtue that they would have him appear, where did he get them? Why did he take them out of Mr. Ballard's files or Mrs. Ballard's files and produce them here in court? Would you men want your valet or your secretary or your associate to take things out of your files, incriminating or otherwise, and hold them back for some purpose and then produce them some time later on an income tax evasion or something else?

I ask those last two propositions particularly in view of the fact that I would like the Government to explain to you and to me the absence of some other important documents. They used some extracts here from documents received from Pat Crouse and from Mrs. Portia Terry that, as I say, have been purloined in a secretive sort of way and don't produce a thing about the financial records

and reports of classes that Mr. Mundy testified were sent to the Saint Germain Press after every class and to the auditors in Chicago after every class. Why don't they produce those records? They don't produce those records because of the fact those records are in an audit that show expenses, too; but no, they just produce the receipts. We could all be wealthy if we hundred percented everything that came in. They don't produce those and Mrs. Mundy testified here that she made those reports and sent them to the auditors in Chicago, also the Saint Germain Press, but they don't produce those at all.

Then Mr. Neukom says, by way of argument in some interruption that occurred yesterday morning, that they didn't [961] have those books except for 1938 or 1939 after the companies were incorporated. What about the Donnelly books? They can't sell more books than were published. Mr. Callahan himself testified that he went to Chicago, talked to Donnelly & Company, told them what he wanted in the way of records from their files as to what books were published, and so forth. Then he said they sent them out here. To whom? They sent them out to the United States Attorney's Office. The United States Attorney's Office—Mr. Neukom and Mr. Lazarus—so his testimony was, turned them over to the F. B. I. and the F. B. I. made an audit of those books. Where is that audit? They get up here and talk about fancy figures, that ratio of 10 to 1 and 1 to 10, whatever suits his purpose. Where in the name of heaven he ever got that, I don't know. He

showed, anyway, that they had some 3 million people. Well, divide that by 10, and some way they get $1,800,000. They can't sell more books than have been published. Have them answer that for you, will you, or for me?

Then I asked Mr. Callahan the very frank question, "Did you see that F. B. I. report or that audit?"

"I don't think I did."

"Will you say you didn't?"

"No."

That is what he said. He said it twice. They don't want these audits in here, gentlemen, because of the fact the whole fabric of this case will go to pieces—the whole fabric will go to pieces, whatever there is of it.

Let me ask you bankers this: They say that after Mrs. Ballard's arrest they saw certain books of hers up here and those books were on metaphysics. Those are the books they seized after Mrs. Ballard's arrest.

You men who know anything about investigating agencies, particularly Government investigating agencies, are they going [962] to be satisfied with grabbing metaphysical books? They will go to their books. They will go to your books. They will go to all of them and dig them out from the ground up, and you can bet your life they did it in this case. They will dig up the income tax returns, too—and they did it in this case. How do I know? They offered Paul Stickell's. The very worst year they

had, apparently, was Paul Stickell's one year, $7500, in the way of love gifts, and so forth, and the Government allowed them a deduction, an allowable deduction, of $5500, and that is the tremendous profit they talk about, $1,800,000. "Will a man sell his soul for a mess of pottage?" Let me tell you if they didn't have those income tax returns in their files, they are derelict in their duty.

Then they will say we didn't open up these defendants for cross examination. I threw the bars down so far as Mrs. Ballard was concerned and I asked the other people questions that they could answer, and I will ask you men if the Court didn't let them ask any questions they wanted to ask of these defendants, even with Donald, and if those defendants' testimony was circumscribed, it was my fault because this case, gentlemen, had to end some time. I want to be young enough to get out of the courtroom without having to crawl out. I circumscribed the testimony.

We have Donald's statements in writing. We have Mrs. Ballard's statements in writing. We offered Betty Mumly's testimony about financial reports from beginning to end. Paul Stickell, William Cassiere and Louise Majerus were all asked about their financial interest, but the Government laid back and wouldn't ask them, wouldn't offer in evidence those things which would damn them if they made these tremendous profits. And believe you me, gentlemen, if they hadn't rendered an income tax return to the Government and if the Government

didn't [963] think that income tax return was right, they wouldn't be in here on a mail fraud charge; they would be in here on something else. You ask them to explain that, the presence of the Crouse letters, the Terry letters, and the absence of the records.

Then, furthermore, Miss McGiniss—yes, they talked to our bookkeeper. Mr. Callahan said he talked to our bookkeeper in Los Angeles, the woman who kept care of our books back there in Chicago. They don't put her on.

Now, then, I come to this other thing which I think has no place in the record, but I guess I am wrong—the Court held so. I am referring to those Shasta letters. I am really glad they went in now. I might say that this is once I am glad the Court held I was wrong.

* * * * * * *

Now, these letters were written at the outset—and this is when the scheme was supposed to have started—written by a man to his wife, confidential letters which they didn't think would be profaned by other eyes and certainly not brought into court where one of the parties was charged with a criminal fraud. Listen to this language. He talks about the most mundane things and about the wonderful experiences he has had. The very fact he talks about ordinary things like hemorrhoids, Montgomery-Ward catalogs and building a house stamps them as being written not by a nut. They are things that you

would write to your wife about and things I would write to my wife about—and here is what he says:

> "I wrote you yesterday"—this was in 1930—"I went to the Doerrs' house last night. They want me to come to their house and take a room at $4 a week. I could not make up my mind then and there so I got home at 12:00 p. m. and I was ready to retire, sat in meditation a few minutes that the healing [964] current might go forth to you, and as I finished, like a flash I knew"—and he underscored that—"I was to accept the room at the Doerrs. On awakening this morning my call I have waited for 30 years came not by sight or hearing but I just positively and certainly knew and was asked 'Are you ready to serve where you are directed?' I said, 'I certainly am ready.' 'Then take the room and serve where you are almost ready to refuse, and according to our joy and poise in circumstances will the time be reckoned.' I said, 'I joyfully accept.'"

Was he trying to flim-flam and defraud his wife? The same letter:

> "I feel as never before. Be of good cheer. Our waiting has not been in vain. Our reward of Light and Wisdom is at hand. I plead with you, conserve your energy that the writing intended may be given forth through you. Feel now and forever that eternal peace and poise. I speak for the Mighty Ministering Host. I shall do joyfully what appears before me to be done.

And I know that know, will come the financial help which we need. The sentence in your letter 'wherever we are, we are the guests of God,' is one of the Mightiest Truths ever spoken. It is like the Elixir of Life.'

"Henceforth I will make a record of only the joyous experiences that speak of God manifest in the mind and Heart of Man."

I could read all of these, but I am only reading one or two excerpts.

He speaks of her again that same year:

"You can be sure in the invisible it is all [965] worked out now. (speaking of the house he was going to build) How glorious that would be, to live out there all winter in that glorious quiet, having the supply all in, the staples I mean." Just ordinary things.

"It is like a whole new activity was taking place in my brain. Well, our life and affairs are now under perfect Divine Order. So be it."

And again:

"His Highness says (Mr. Gilbert read this) when the first book begins to get into circulation, I will be wise to change from here, for immediately people will begin to come here quietly to try to find out who Ray is, knowing it was written in this locality, but he said that should not be changed."

Then I read something that Mr. Gilbert didn't read:

> "He says after the books are out for six months then that frantic desire to find Ray will subside to a large degree."

Then speaking about the part that Mr. Lazarus read where he connected it up with the books and showed what a lot of hokum it was, about the Amazon trip, Mr. Lazarus read a part and I am going to read the rest of it because I think it is significant and shows what Mr. Ballard felt. He may have been mistaken in what he honestly believed or he wouldn't have disclosed it to his wife.

> "I have been held so steady at the typewriter, haven't had a minute to get a word to you, I am now underground on the Madeia, branch of the Amazon, and I have just taken down three typed pages of the most marvelous words ever uttered, it seems to me, by the [966] Being who officiated there sixteen thousand years ago, I think this is the place once intimated to us, I began this morning and didn't stop until after three, didn't dare to stop lest I lose the connection. It is simply marvelous."

Now if that had been written to some one of these so-called people who were misled, why there may have been something to talk about, but it was written to his wife.

Then I want the Government, as another proposition, to explain to you the writing of the letters

by Mrs. Ballard to her own son, "Dear Donnie: Make your peace with your own Presence and with Saint Germain." That was for his own eyes, not for some one else's eyes. She pleads with her son like you would plead with your son or I would plead with my son.

And I want them also to tell you, if they can, why it was that if this is all a fake and a fraud, that Mrs. Ballard writes such letters to her son; why it was that Mr. Rogers taught the principles to his children at their own fireside; why it was that Mr. Cassiere bought a book and sent it to his wife. As the Lord says:

> "Or what man is there of you, whom if his son ask bread, will he give him a stone?
>
> "Or, if a fish, will he give him a serpent?
>
> "If *he* then, being evil, know how to give good gifts unto your children, how much more shall your father, which is in heaven, give good things to them that ask him?"

Now the prosecution, if they can answer these propositions that I have laid down to you gentlemen, can give you a satisfactory answer to them so that you will believe beyond a reasonable doubt that these men and women are guilty of this offense, then convict them. But don't you come back with a [967] compromise on any one or all of them, I hope. If they can explain those things, then I want them to explain them and I want you to apply as a criterion of faith and belief, Mrs. Bliss' activities.

She was never indicted. No breath or suspicion is against her for entering into a conspiracy to defraud. No suggestion is made that she was engaged in any scheme to defraud. They vouched for her integrity and her honesty by putting her on the witness stand, and the Court will no doubt so instruct you.

And what did she do? She was with the organization before many of these defendants were. She met Mrs. Ballard on September 12, 1930—and I am epitomizing her testimony (and I have the pages for it too)—she met Mrs. Ballard September 12, 1930, and was connected with the movement from its inception until April 9, 1939.

The class met in my home every Wednesday evening and I attended one every Tuesday evening and every Friday afternoon in Riverside and one in the Ballard home each Friday evening. I invited the Ballards to utilize my home for classes.

I heard the first three books read in manuscript form before publication and never missed any portion out of the books and have never seen anything in the books that I had not previously heard in manuscript form. I recall that Mrs. Ballard sometimes read a seeming mistake or something that she corrected, and heard her say, "Daddy, this should be thus and so," and so on.

I remember the discourses in Chicago pertaining to the precipitation of gold.

Ultimately appointed a messenger in the move-

ment, a full messenger of the Light, to quote her own appointment.

Had implicit confidence in the teachings until I began [968] to have serious doubt about December 1938.

Taught similar principles to those taught by the Ballards after I became a messenger on September 28, 1934, and attended classes in Chicago, Cincinnati, Detroit, Dallas, and Los Angeles.

Started a group in Chicago.

Had full knowledge of the meaning of the chart.

Heard representations as to ascension of people although never saw anyone ascend.

Was an appointed messenger, along with Paul Stickell.

Established a reading room on September 26, 1936, and continued it in operation until she left the work in April 1939, although she previously said, "I began to have serious doubt in December 1938."

She sold charts for $15, sold books and other insignia.

She received a percentage from the sale of the books and certain love gifts.

Her appointment as a messenger gave her authority a little greater than the group leaders.

And yet she is not charged here.

And so, gentlemen of the jury, our task of the defense is finished as best we can. We may not have carried this movement very well, but we have done the best we could with our limitations and

with the nature of the charge that we have to meet.

It is unfortunate that anybody should be charged in a court of law with a crime of this character and kind.

Speaking a little bit about experience, if you men know anything about mail frauds at all, you know it is an unusual thing in a mail fraud case to accept on a jury men of the business pursuits of many of you gentlemen——

The Court (Interrupting): Please do not leave the [969] courtroom until the adjournment. It disturbs counsel in his argument. We will be through in just ten minutes.

Proceed, Mr. Cannon.

Mr. Cannon: Thank you.

It is an unusual thing to take men on a fraud case who follow the general pursuits of you men, many of you. I tried enough fraud cases to know that. The reason is that where you get into a so-called commercial fraud, as the Government would have you believe this was, you keep bankers off, you keep insurance men off, you keep a lot of oil men off, particularly oil men of big companies, and things of that character and kind because when you get into a large figure, where people have taken large sums of money out, sometimes people become prejudiced about it.

But in this case, when people come to you with the simplest kind of a defense, and the only defense that is justified in this or any other case, that of

absolute truth, when they are willing to meet the Government on the issues they themselves laid down, and meet them as best they can; and I ask you, if this was such a gigantic fraud, why haven't they brought up to you in this courtroom people from Los Angeles, whose background can be checked, who can be checked as to their movements and things of that kind, rather than drag them in from all over the United States. And, of course, we had to meet them the best we could.

If you gentlemen come to the conclusion, after hearing the evidence and these arguments and the instructions of the Court, that these people have been guilty of this base, rank, black fraud, then the way is clear to you, your obligation is to convict them; but if, on the other hand, you find that either the defendants have established their innocence, which they are not required to do, but if you find that the Government has failed [970] in any material respect to establish that case against them beyond a reasonable doubt, it is your duty to acquit.

And with that statement we are willing to leave it with you, gentlemen. [971]

CLOSING ARGUMENT IN BEHALF OF THE GOVERNMENT

Mr. Neukom: Gentlemen of the jury, your Honor and counsel for the defendants: It seems quite in form here to express gratitude for the services that

we are all rendering. I wish to thank you, his Honor. This has been a very orderly trial. I wish to thank counsel for the defense for the manner in which they have acted. I wish to thank Mr. Cross, the clerk. I wish to thank Mr. Eddie Drew, the bailiff. I wish to thank George Boshae, the bailiff, and I wish to thank everyone who, as good American citizens, have contributed here in times such as this that we may approach this matter in the manner in which we have.

Gentlemen, let's strip this case of everything else except just one thing, and that is good common sense. Let's come down to earth and talk horse sense, and that is all you need to do. When you are bothered with anything like reasonable doubt, presumption of innocence, all those phrases, just apply the good common sense that you use in any important affair. We will be satisfied. The defendants should be satisfied. That is the requirement of the law.

Counsel—and I don't blame them; I probably would be doing the same thing if I were defending—have asked me 12 questions. Why? He would like to get me off quibbling over certain little incidents, collateral matters that haven't anything to do with the issues in this case just so I will stay away from the issues of the case. I am happy, gentlemen, despite the talent, despite the ability, despite all that has come to you in the last six hours of argument—I am happy that we have evidence here, factual evidence. Nothing was read out of the Bible, from

these books, excepting a few isolated passages. They make much ado out [972] of reading out of the Bible. They talk to you about Jesus and His miracles. They talk about John and about the other apostles. Did Jesus sell books? Did Jesus make representations to people that were false with a desire to get their money? No. We haven't brought religion in this case. I made you a promise at the start of this trial, and I intend to abide to by it, but it does appear that we are going to have to protect religion, and I believe that there is a great deal to that in this case.

I want you gentlemen to understand that there are a lot of things utilized in defending a case where the evidence is against you. One party talked about the war. This case started before we entered the war. The original case started before we entered the war. The investigation started before we entered the war. Gentlemen, cases of that type will continue on after we have won the war. That has no place in this case.

Persecution of martyrs: Mrs. Ballard and her cohorts, the staff, living in luxury at the Biltmore Hotel, being able to do anything they want to. They are martyrs—martyrs. I seem to smell the must of the catacombs. It seemed to me that they were bringing the rack of the inquisition. They were comparing these people to all the martyrs throughout the ages. Well, I wonder what those martyrs think to be placed in such a category—commercialism.

Gentlemen, remember this: We know our duty and our oath. We recognize that everyone has a free right to worship as they please, to worship and to believe as they please. I believe in eternal life. I believe in faith. We believe in prayer. We believe in those precepts, and because we believe in them we do not believe that they should be prostituted by people who would make misrepresentations, and that is how we approach this.

Crime is no less odious because it is shallacked with a little bit of religion. If that were true, gentlemen, I advise [973] any of you who may want to develop a good scheme to come forth with some idea, be whatever it may, dress it up, put a little astuteness to it, and call it religion. Isn't it strange, gentlemen, these people didn't call this a religion until they got on trial? I don't know what it is. I believe it occupies the category that was intended by the constitutional measure, namely, that people have the right to believe as they please as long as they don't misrepresent and defraud people in their beliefs; but that is as far as they have a right to go, and when they have overstepped that, gentlemen, they must come forth and they must bear their responsibilities.

We didn't write their ticket for them. They chose to do what they did and that is why they are here now. They are here now before you because of their own faults, because they overstepped themselves.

Gentlemen, they would tell you because they don't believe in narcotics that they are wonderful. We

passed it by. They would tell you they are persecuted because they have certain beliefs about their food. We passed it by. They would tell you that we didn't dwell upon patriotism, and I notice that lots of their followers wear the American flag. There is nothing wrong in that. That is a very beautiful thing. But, gentlemen, you don't need to wear the American Flag upon your lapel to be an American. I am not saying that you are wrong because you do, but I am wondering if the words of Sam Johnson, the great literary man, aren't applicable to this situation: "Patriotism is the last refuge of a scoundrel."

Now, gentlemen, I am going to very quickly go to the facts in this case because I think after all you are concerned with the evidence, not in persecutions, not in religions, not in comparisons, not in ideas. You are concerned with whether they believed what they dished out or, as Mr. Peterson quoted to you [974] from the Bible, "By their works ye shall know them." And I am going to quote to you from their works, and there can't be anything more certain than their own works. I don't care if people differed in their understanding of what they heard in these various meetings, but [redacted] is in black and white, or purple and white—[redacted] know what color it is in these magazines [redacted] is what they passed out and that is what they represented, and that is what they are going to have to answer for.

They would have you believe that there is something singular about this case, that it isn't a mail

fraud case? Why, gentlemen, they know that right here in California, in the Northern District of California, about 20 years ago a mail fraud case, in many respects similar to this—and I am only mentioning this because Mr. Donnelly and Mr. Peterson mentioned it; I have a right to answer them on that point—a man claimed he had the Christ power. He put out a book where he wrote a chapter on the life of the I Am. He had healing form letters and he was convicted.

About 25 years ago in California there was a group of people—I think two—prosecuted for mail fraud. They claimed to be the sons of God, that they had the power of Moses and Elijah, that the mantle of Jesus had fallen on them, that they had the keys to the kingdom of heaven. They were prosecuted and they were convicted, gentlemen. There are others. This is nothing unusual. And this is going to be one more on that list, I believe.

Gentlemen, Mr. Cannon asked me to answer some questions. I am going to answer quite a few of them, and I believe he will wish he hadn't asked them; but one in passing, because after all I have to arrange my talk, too. He stated that it was unusual that we brought witnesses from all over the country, witnesses that they had no chance to look into. Of course, that was byplay, gentlemen, because they knew almost every witness we brought in. But let me read you 16 witnesses that came right from this county, [975] most of them from Los Angeles. He

overlooked this when he tried to pass at you that blurb. Mr. Stover, Mr. Rogers, Mrs. Rogers, Mrs. Adams, Mr. Stevens, Mr. Ricord, Mr. Crouse, Mrs. Shinn, Mrs. Portia Terry, Dr. Moor, Mrs. LaFerrera, Dr. Davidson, Dr. Loomis, Dr. Brigham, Dr. Cottam, Col. Bailey. Isn't that an answer, gentlemen? Sixteen people right from this country, and I don't believe there were 30 witnesses all together on behalf of the Government, and he complains. They knew about every one of them, gentlemen.

Mr. Donnelly thought he had me in a corner. I didn't like that one remark from Mr. Donnelly, that he thought I was going to put some pressure on that nice looking lad or young man from around Denver, Colorado, because I asked him if he was with the Civil Service. You know why I asked it? The man had made a lot of statements here about his eyesight and what he had been cured of. I certainly didn't want him to lose his job. I think he is a mighty fine fellow. But I wanted to know, and I could have found out, and he knows it, that if he had taken a medical examination there would have been a record, and if he had been under Civil Service he would have had a medical examination and, gentlemen, that is the only reason I asked it.

I don't even complain about this Mrs. Kelly, who could come to Los Angeles eight or nine times to attend these classes and work for a department back in Washington. I wish I had a job like she has, though, so I could take all these trips and be away

so much. No! we are not complaining about any of their witnesses.

Gentlemen, they brought into the case the Bible. Was there anything said about Isaiah misrepresenting to people, selling books, selling charts, selling flames-in-action, and selling them things that would make them acquire their instantaneous precipitation or their ascension into heaven? No! He didn't deal in those kinds of things. [976]

Did the Apostle John deal in such things? No!

Did Jesus use the mails to defraud people? No!

Did any of the Biblical characters misrepresent for commercial reasons? No!

Jesus drove the money changers from the temple, and that is what we are going to do here.

Gentlemen, Mr. Cannon several days ago made an opening statement before any witnesses for the defense were placed upon the stand. You remember that statement. He told you that they were going to produce hundreds of letters, testimonial letters, showing where people had been cured.

Mr. Cannon: That isn't in evidence. I didn't make any such statement.

Mr. Neukom: Gentlemen, if I am incorrect, and at any time if I am incorrect, your recollection of the evidence is, after all, final. My recollection of the evidence is that Mr. Cannon stated that they would bring forth letters of testimonials showing that Mrs. Ballard had received many letters proclaiming that people had been healed.

Mr. Cannon: Many, not hundreds.

Mr. Neukom: Kindly look for it, and if I am in error, I will withdraw it.

Now, Mr. Cannon, in his opening speech, knew about the Government having certain records of these corporations before he put a witness on. He knew that we had the records, the books of account of these corporations for a certain 18-month period of time. He didn't say a word about it then, gentlemen. He was glad we didn't put them in evidence. Why, he would have hollered to the high heavens here if we had tried to put in any of those audit reports. He would have said it didn't have a thing to do with this case. But now, because it has been brought out through Mr. Callahan that we did have the books—and, gentlemen, [977] you can take it there is no other evidence—we only had the books for a limited period of time, and they have even stated themselves that we can only get the corporate records, and the corporation, Saint Germain Press, wasn't started until December 12, 1939. Do you think we were going to fall into the trap of only giving you a smattering of what they had made? Of course we weren't. I am going to give you a more complete answer than that. I am going to give you a conclusive answer, I think.

Mr. Crouse testified that moneys that came through the mail for healing frequently went into the hands and pockets of Mr. Ballard. They didn't go into these Betty Mundy reports. Do you think we had confidence in the records of the corporation?

Would you have confidence in it, in line with that? Does it appear to you, gentlemen, that we have confidence in the representations contained in either of these first two books that they now quibble over, to the narratives or the happenings therein related? Does it appear that we do? Of course not. And if we didn't have confidence in these, would we have confidence in this ledger of theirs or their account books? Of course not. They could get the books. If they were so significant, why didn't they produce them. If they thought they would have meant so much, why didn't they produce them?

With respect to that question about Mr. Ferguson being or not being here, they knew Mr. Ferguson was in the courtroom. They called Mr. Callahan. They called Mrs. de Carranza. Why didn't they call him? I don't know. That is just another example of byplay to confuse the issues, gentlemen, the issues being—we will go into them and very thoroughly; and I notice they tried to avoid them—ascension, false representations! Precipitation, false representations! Cataclysms, false representations! This blue record, healing, false representations! The representation with respect to the appearance of the ascended masters, all of [978] those things, false representations!

Before I pass on to something else, I am going to point out this picture. I want to answer a few of these things. I am not going to waste too much of my time on them because I think they are collateral. Mr. Cannon asked me to answer why Dr. Cottam,

his testimony, he says, is wrong with respect to Jesus' picture not being present until he told them. Well, gentlemen, I don't know why, but this is the 1938 edition of the "Ascended Master Light", the only one we have. If there is any earlier edition, I should imagine they would have produced it. There is where you find the picture of Jesus. (Exhibiting picture)

Now, gentlemen, Dr. Cottam didn't say what they tried to have him say. He said he suggested that they put a picture of Jesus on the platform. That is what he said, that is all he said. They just tried to twist his testimony.

Gentlemen, I am going to go to the one point in this case which I think will show the bad faith of these defendants as much as anything else—and, gentlemen, because other people might have believed it, too, or because other people aren't on trial here, doesn't mean a thing. We have got on trial here the people that made their living out of this thing, that have profited from it. Because maybe some others should be on trial is utterly immaterial.

First, let's start with this premise (and I am reading from their own magazine): Now, this is Saint Germain talking—Saint Germain—Mrs. Ballard's Charlie McCarthy, the most convenient thing you ever saw. Why, it is even better than Edgar Bergen's Charlie McCarthy. She doesn't even have to take care of it. All she need do is call on it whenever she needs it. Whenever she wanted something, she wrote a letter or a discourse. Whenever she

wanted to blast someone, she wrote a letter or a discourse. Why, it is so evident here, gentlemen! But, gentlemen, Saint [979] Germain, this man that she always looks to, or whatever he may be, says that these experiences are the foundation of this work in these books, just as essential, gentlemen, as the rubber tires you have got on your automobiles. That is what he said. Reading, "That this good brother's experiences are really true." Well, everybody on the stand said that is what they understood the Ballards stated. "His experiences are the foundation upon which this work is established." Now, there is the foundation.

Now, maybe you can turn to the "Unveiled Mysteries" and say it is a fiction book. Maybe is it a fairy tale. Maybe it is a fantasy. If it is, why didn't they call it so? Why do they misrepresent it? Why do they tell people you maye have the same transcendent experiences if you will follow those things? I will pass that for a while. I am not going to argue that at this time.

Gentlemen, you will remember when William Cassiere was on the stand I went through this "Magic Presence" with him. Upon many, many occasions Mr. Cassiere would say, "I don't recall reading that to my students", or "I must not have read that to my students", or "I didn't read that to my students." Do you know why? Because he was in a quan*dry*. He taught these things. Now, remember everything in "Unveiled Mysteries" occurred in 1930. The last incident is in December of 1930.

Now, this is the second book. Everyone says that, nobody can doubt it.

Now, gentlemen, these trips in "The Magic Presence," and I call your attention to them again, they are not made by the body riding around on a magic carpet like the Thief of Bagdad; they are traveling on trains, trans-Atlantic liners. They are tipping people. They are traveling in airplanes. They are not doing any of the things that they would have you believe. These are real. There is nothing fanciful about these. This is no inner soul—I don't know what that means—or inner body. But [980] listen to what it says:

> "The Retreats, people, and instruments I saw and associated with, while with the Ascended Masters, are real physical places and things."

That only means one thing, gentlemen, real, physical things, bodies just like mine.

"and tangible, living, breathing beings."

They are not floating around in space.

> "They are not imaginary nor symbolic and are to be interpreted in any such way."

Godfre Ray King—Mr. Ballard. They taught this.

Now, follow this—gentlemen, I am not going to read it all to you because I have already read some to you—you can follow me. You can take the book. You can make notes now. But assume I am reading

correct, and I will assure you that I am. First they met Daniel Rayborn at the Brown Palace Hotel in Denver. That is on page 1. Denver, Colorado, is real.

Now, gentlemen, this all follows "Unveiled Mysteries", and this has to be in 1931. If you don't believe that—I mean if there is any doubt in your mind about it happening in 1931, I am going to pick you up the very first date, July 28, 1931, on page 132. Gentlemen, I can't write very good, so stay with me (Writing on blackboard) July 28, 1931. That is Mr. Ballard's experience, the first date related in this book.

Then on page 175 the 24th of September came. Now, gentlemen, I am not going to tell you what all happened here. They haven't seen fit to read it to you, and I am not going to read it all to you now. If you want, you can read it.

"Before leaving for Washington* * *"

Now, I am going to skip. I read to you heretofore about changing trains at Chicago on page 179. Now, that is real. That isn't any cavern. That isn't any Mount Shasta trip. That is just [981] a real thing, things that I can understand. It is down to earth. It is common sense.

On page 225 they arrive in New York, and again on page 225 they use the telephone. I don't think you would haye to telephone an ascended master, and I don't think these people believed it, either.

Again on page 225 a highclass apartment hotel is referred to.

Now, gentlemen, let's see whether these are physical. On page 226:

> "I jumped into a taxi, and followed, giving the driver orders to keep them in sight. Their car arrived at a pier from which a trans-Atlantic liner was sailing. They went aboard at once."

Page 226, gentlemen, refers to a steamer and the boarding of it. Then for a few pages it refers to the voyage, the first, the second, the third and the fourth day of the voyage. They landed in—I don't recall whether it is stated they landed in France or not on that first trip—yes, they were leaving for Cherbourg.

Now, on page 242 they return to Washington, D. C., a place, a town.

Now, October 2nd comes along—this is all in the same year—October 2nd comes:

> "We had arrived in Washington the 2nd of October and the Christmas season was now approaching."

On page 244:

> "Christmas Eve came."

265:

> "Our intensive training under Saint Germain continued for three months."

265:

"We left Washington the 7th of April."

[982]

Now, they are over into 1932. They have to go over into another year. They are over now into 1932.

Now, on 287 the next date is given—it doesn't give the year, but it is a continuation—the 26th of July. I will put down July 26th. (Writing on blackboard) I am going to put '32 here. It doesn't say '32 in the book, and I am going to be fair about it, but that is all that it could be.

Now, Mr. Ballard, according to Mrs. Ballard, was in Chicago on November 6, 1931. Mr. Bronwell says that he was in Chicago in the summer of 1932. Mrs. Bliss places him in Chicago in the fall of 1932. Now, gentlemen, follow along just for a little more. These are the foundations upon which this was established. That is what Saint Germain says, and they say this is true; everybody says it is true, but it isn't true and they didn't believe it was true; and when you analyze it, you will find this out. This is just an example.

Now, on page 293 the 20th of August came and they left on a train and they were to arrive in New York. They sail on the "S. S. Majestic" on the 28th from New York. Well, you may wonder why we didn't search the records of the "S. S. Majestic" and find out whether or not Mr. and Mrs. Ballard sailed on that vessel. Well, look at his name, Godfre

Ray King. I think there is another here about Dick Gilbert. I don't know what name he would have sailed under. Logic proves he didn't sail.

Continuing, "The boat docked at Cherbourg." Now, gentlemen, this is all in 1932. He is having these trips. On 313, "We had a delightful trip on the deep blue waters of the Mediterranean, and finally docked at Alexandria."

On page 315, "Our trip through the Suez Canal was delightful."

On page 336, "In a short time we will go to India for a stay of 10 months." [983]

Ten months, gentlemen. That is bound to put it in 1933, but he is in Chicago, according to these books, the "I Am Discourses." He had all these discourses starting from July 4, 1932, when he was out in the West. They aren't true. And it goes on. He is in Calcutta. He is in Benares. He is in the Himalayas where he is going to be for many months.

Now, gentlemen, I don't know and I don't care —the Shasta letters are in evidence—whether Mr. Cannon let them in or whether he didn't let them in, whether he was gracious or not. I don't think he did. They are in evidence. Where are any letters from India? Where are any letters from France? Where are any letters from Arabia? There aren't any. Why? Because Mr. Ballard wasn't there, and they know he wasn't there. Mr. Stickell knows he wasn't there. He has common sense. He can reason these things out. If he didn't reason them out, he is perpetrating a fraud. He is reckless. He

is putting something out that someone says is true. That is the foundation and the basis for this thing, setting it forth as factual. He isn't telling people this is Baron Munchausen, this isn't Gulliver's Travels; this is something that is supposed to be sacred. Gentlemen, people believe things like this. People believed that these trips occurred. That gave an aura of something to these people that put them off and apart, but Mr. Cassiere knew that this didn't occur, but he taught it, and he continued to teach it. Betty Mundy knew it couldn't have occurred. Maybe Mrs. Bliss knew it. Maybe Mr. Sieber should have known it. I don't believe he should, because he wasn't with them when the first book came out.

Oh, I do want to say something about Mr. Sieber. I think Mr. Sieber's accident that Saint Germain didn't protect him from where he was all banged up in Washington, D. C., there in 1935 was one of the best things that ever took place in his life, or he would have been on trial. He got out of the movement. He was the business [984] manager that took 50 percent interest in this.

Gentlemen, we accepted the burden in this case, and we gladly accepted it. We feel that the evidence in this case establishes beyond any question of doubt the fraud involved here. The intent in a person's mind is something that we can't analyze. Even though I had the brain of this Dr. McClanathen, that blue doctor, that man that didn't like cheese and didn't like yeast, why, gentlemen, even though

I had his brain, or if I had the brain of that Columbia professor, Dr. Seward, who analyzed everything, I still couldn't just look at a person to find out whether they were exercising good or bad faith, but you can take all the facts and circumstances in this case and put them together and you can tell that religion becomes convenient now because they want to get off. It is a refuge. It is the rock of ages. Gentlemen, it wasn't so convenient when they were making these misrepresentations.

They put Mr. Zimmerman on the stand, the Philco accountant. They thought they were going to overawe us. He was a nice man. They started out with that platitudinous bromide, "Didn't Mrs. Ballard say 'Do not believe us, prove us'?" And, boy, they dropped that like a hot potato after a few witnesses because we brought all this in, their own writings, stating that Mrs. Ballard said they didn't make any mistakes, and those who were going to suffer the consequences. But let me just tell the one thing that I want to emphasize about Mr. Zimmerman. Mr. Zimmerman, when he was asked about the difference between the old and the new dispensation, said he was a little in doubt. He was a little in doubt, but he said he believed even under the old that the rays did something to your body so that there was none of it left, and under the new dispensation—well, you recall his testimony.

On the subject matter of precipitation, you recall what he said. He said, "If you get sufficiently perfect you ought to be [985] able to precipitate," but he hadn't, didn't know anyone that had.

Dr. Haldey, the gentleman they brought here, a rather old man, is a nice gentleman. Although he had been healed of a lot of things, he didn't even contend that he used this I Am teaching to heal people with. He practiced his profession in the old orthodox way, and he believed that if you got sufficiently perfect you could precipitate, and precipitate the way we all understand it, gentlemen.

Gentlemen, if you were going to precipitate in this manner, just like a paycheck or, like Mr. Cassiere says, getting a shirt, if it just meant that, why in the world would it be so significant that 40,000 people are about to precipitate? If it just means getting something in the usual channel, why write about the usual? Read it!

> "Today there are approximately 40,000 people among the I Am student who are nearing the point where they can call forth precipitation. There is nothing strange about it."

40,000 that are going to precipitate! Why they knew what they meant.

Now it is different. I wonder what she is going to have to do if she is going to have to go out and confront her followers with this different version.

Gentlemen, I am going to go into a subject matter, and I have noticed that many of counsel have avoided the proposition of the essential principles set forth in this indictment. Of course we set the battleground, if you want to call it a battleground. We made these charges. It was hard work. This

isn't an easy kind of a case. I will be glad when it is over too, the same as everyone else.

Gentlemen, this indictment here you are privileged to have if you want it. But they would have you understand, or try to create the illusion, that this is not a mail fraud case. You pick [986] it up. His Honor has stricken Count I—not the whole count; don't get confused on that—just the part dealing with this check of Mrs. Bliss because, as I recall, his Honor stated that it appeared to be a gift from Mrs. Bliss so therefore it should not be in the indictment.

Find the other letters and you find, gentlemen, that they all went through the mail, every one of them. Some are checks that cleared through the mail. You who are bankers know that checks frequently clear through the mail. They are responsible if they set in motion. They don't actually have to mail the check.

And in considering these letters here, gentlemen, bear this in mind: Don't be confused over the possibility that these letters may not contain lots of misrepresentations or may not be requests for money. That isn't necessary. It is sufficient if they devise the scheme or artifice to defraud and then use the mails in the furtherance of it. And you will find, gentlemen, that all of these letters went through the mail, or they wouldn't have been put in evidence.

This phonograph record went through the mail (exhibiting). The checks! Letters requesting healing with checks and money were sent to Mrs. Ballard or Mr. Ballard. His testimony is that they

went through the mail. Books went through the mail. Many of them went through the mail. The whole thing. There was the full utilization of the mail.

Why, gentlemen, I just want, in passing, to say this about this blue record, that if there wasn't a single other thing in this testimony here—there wasn't a single other thing—this representation about this blue record is one of the most vicious and cunning ways of defrauding that I ever heard tell. Why they even bring in a black record themselves. A black record was good enough for them for a while. Then somebody hit upon the idea that a blue record would be a little better. [987]

No, no, gentlemen. It is 1940. To keep the thing going you have to keep up interest, so the blue record came out.

Special healing quality! Special healing quality!

"We have been working on these for some time."

Did anybody come in and confirm that? Didn't Mr. Goldberg say he just took one of his records, a sample, they liked the color, that Mrs. Ballard picked it out? Why they don't even testify that they talked to Dr. McClenathen about this blue record. You haven't a bit of evidence that there is any therapeutic value to this record. You know that it won't cure cancer, it won't cure tumors, it won't cure any of those things.

Why we like the color blue. I like nice music. I know that nice music soothes people. But gentle-

men, can you be reckless with the welfare of other people and make representations like this to sell them something when you know that people, when they are suffering, when they don't know what is the matter with them, are liable to go for anything? Why even Mrs. Lavett—and I don't mean to be rude to her, if I was—the lady that had all these diseases, paralysis, heart trouble, those six or seven or eight or nine others—I guess she would have had more if you kept her on the stand longer—but she had seven healthy children, six of them born before she ever joined the I Am. She didn't even take the stand to say that she had been cured of anything by this record. There wasn't a single solitary soul that took the stand upon that proposition.

Why? Because the defendants knew that it was false; they knew they couldn't find anybody that would even go that far for them.

Gentlemen, I am going to talk to you about the subject matter of ascension a little more. I don't like to keep talking about the subject matters, and I know they are getting old to you, but they are issues in the case. I have got a job to perform, and I am going to do it. [988]

Here is their book, Exhibit No. 13, May 1936, a picture (exhibiting)—"The Ascension."

Now wait and see if this doesn't conform with what the Government witnesses testified to.

"Sixteen of whom were from Los Angeles.

* * *

"He is no longer subject to any of the limitations of the outer world for he has the full

use of the power of precipitation and can take his body anywhere he desires instantly."

That is the same as Mrs. Bliss and Mrs. Pinkerton understood, and it is the same as Mr. Zimmerman understood.

Continuing on:

"The gravity pull of earth can no longer affect it. The body rises into the atmosphere and follows the thought, going instantly wherever the individual desires. As an airplane propeller, when its speed is increased, generates enough power to overcome the gravity pull of earth, so does the increase of light in the flesh body generate the same kind of power to lift the body into the atmosphere."

"To lift the body." That is clear. That is English. You don't have to put any quibbling interpretation upon that.

Reading over—I am not going to read it all to you, because we already have:

"To the point where the body can rise into the air and become invisible or visible as the ascended masters are able to do."

Now, gentlemen, they compare this to Jesus' ascension, as is expressed in Luke 24, 50 and 51. I read that to you. I believe that is the only place from the Bible that I have read to you. They wanted to get that comparison to these people. [989]

Now Jesus did ascend in His physical body. Now, Mr. Ballard didn't ascend in his physical body and

Mr. Cassiere and Mr. Stickell know that. Betty Mundy knows it. Donald Ballard knows it. I am not going to talk about Mrs. Ballard, because she was at the Shrine Auditorium telling them that Mr. Ballard was up at the Royal Teton when he was deathly sick. And Dr. Davis had testified that he had to operate on him because he had cirrhosis of the liver, because he had a serious heart disease.

Now, gentlemen, all the testimony in this case is to the effect that originally they represented that people were going to make their physical ascension, and that is an attractive bait. They are dealing in ascensions. That is their commodity, and that was their commodity. People were told that if they would follow these teachings they would ascend, and they knew they couldn't. And that is bad faith. There isn't anyone that has ascended that you know of here. I believe in the resurrection of the soul. I read about Elijah going up in a flaming chariot, and about Christ. "By their works ye shall know them." Why didn't they travel under true colors?

Gentlemen, Mr. Cassiere dwelt at length upon Government's Exhibit 22, the description of the chart. He talked a lot about the Bible. I believe there has been more Bible mentioned from this witness stand than there has been in all the books put together. But regardless of that—that is immaterial—that is a good source of something I wish there was probably more of in this.

But look, gentlemen, if this isn't the physical body ascending, I don't believe it ever could be

conceived. (Exhibiting document) This was the only purpose of the chart:

> "Every one who has ever accomplished the ascension, Jesus included, had to use this violet consuming flame to dissolve his own human [990] creation before the substance of his flesh body could vibrate at a rate that would enable it to ascend."

Now they have got three explanations of the chart, two other ones besides this, one earlier one, and I find no mention of a Bible or Jesus in any of them other than the one. But I want to pass that. The whole point is, gentlemen, it adds credence to what we have brought out through the Government witnesses, that it was represented to these people that they could ascend, and the Ballards knew they couldn't, and when they couldn't ascend they brought out a new dispensation.

If the old dispensation was good enough, if you could accomplish all that you needed, why in the world did you have to have a new one? If going to heaven under one pathway is all right, gentlemen, there doesn't need to be any new-fangled ideas about going there. If they could pick your bodies up, as they represented, and take it up to heaven in the beginning, or wherever they wanted to take it, and have it come back, go back and forth, go back and forth like an elevator, talk with the ascended masters and come back, why didn't they stick to it? It was attractive at first. They didn't believe in it. We know they didn't believe in it. They knew nobody precipitated.

Why just to show you the fallacy of it, look at the picture of Mr. Kelly, Mr. Kelly whom they represented had ascended. Read what they said about him:

> "Mr. Kelly in Los Angeles, who recently made the ascension. How wonderful it is. His last words before his ascension were, 'In the name of My Mighty I Am Presence, I say to all human creation, you have no power,' and he was released from the body without a moment's illness."

Now this is saint Germain talking. They tried to create the [991] impression, when Mr. Crouse was on the stand, that they were copying the words that Mrs. Kelly wrote in her letter, so they were all right, they were just copying Mrs. Kelly's words about what she said about Mr. Kelly. Saint Germain didn't have to do that. He ought to know. He wouldn't have to wait six weeks to find out if a man ascended. They knew he didn't ascend. Was that good faith?

Gentlemen, I think that is very significant, and I think it shows bad faith.

If there was nothing more in this case than these form letters, if there was not a single thing more in this case than these form letters, I would be willing to have tried Mrs. Ballard upon this evidence.

I too wish Mr. Ballard was here. But he isn't. And I believe that Mrs. Ballard has been the brains back of this all.

Gentlemen, if this isn't a reckless idea. You prepare some form letters—you get so many letters through the mail asking to be healed, enclosing money, it gets to be so good, it gets to be so fine, that you can't bother with it in person, so you let your stenographers and somebody else make a form letter—"1. The healing decree," "1. Heart trouble," "1. Sight and hearing," another "sight and hearing," "supply," and so on. And the testimony is that these letters were signed in a group.

Why it confirms the testimony of Mrs. Meyer from San Francisco when she said, when Mrs. Ballard was confronted with two telegrams from peopeople requesting aid in the healing proposition, "Tell them the usual thing." "Tell them the usual thing."

The lady who has a blue record, sold under the name of her son Donald Ballard, the accredited messengers of Saint Germain—and I am not being sacriligious and I am going to say that they made Jesus a book salesman, and that isn't a sacriligious statement. They are the ones that were sacriligious. We have a right to call them what they call themselves. I contend, gentlemen, when you sell [992] them musical compositions and tell people, represent to people, that it will cure cancer, tumors, and other diseases, that it is a reckless disregard of the truth. And that you know better.

They read you a passage about Christ in healing a person of leprosy. Did Christ use a blue record?

Did Christ use a musical composition? It that good faith?

Let your verdict be a warning to those people who would be religious racketeers. Let's clean out the money-changers from the temple. Let's let people know that whenever they go to worship their Maker, their God Almighty, that they are not in the clutches of those who would deceive them for their money under the false and fraudulent representations.

Did the Government's witnesses see any of these letters written to Mr. Sieber? No. Their eyes might have been opened sooner. I don't know. I rather think that there are some people still, as Mrs. Fowler said, looking through a knothole rather than a porthole. I still think that when some of them place their doubts upon the shelf, if they didn't make it too strong, that it would have collapsed like Mrs. LaFerrera, or maybe the Great Barnum was just a little bit too conservative. I don't know.

Nevertheless, gentlemen, regardless of all of that, these things about precipitation and healing were made to lure people to come in.

These representations about cataclysm, they were going to destroy San Francisco at such and such a time, the east coast and west coast—they were come-ons because the I Ammers were going to be safe.

And there weren't three million or six million people in this movement I don't believe. I don't think there were. I don't believe she sold so many

books. I don't know whether she sold a million or what she sold, but I know the take has been good and I know that the charity has been lean. [993]

That is evidenced by Mrs. Kent's letter, the 11th count. We confronted Mrs. Ballard with it. It is evidenced by these Betty Mundy reports which are, after all, merely examples—they are merely examples. I think there are eight or nine of them here (exhibiting).

Now Mr. Crouse said that in the years 1937, 1938, and 1939, there were 14 classes. You saw the figures. I am not going to go into them all again. They range all the way from $4,000 or $5,000, $6,000, $7,000, $8,000, $9,000, $10,000, $27,000, something like that.

And Mr. Crouse testified that these Washington classes, that this was a representative amount of the additional money that never went into the reports, that went into Mr. Ballard's pockets.

Gentlemen, whether they spent every dime, every single dime of this money when traveling, whether they haven't got a cent anywhere, whether they haven't got a cent to pay their counsel, that doesn't matter—if they have taken money from people under false pretenses, they have to bear the consequences. It isn't their build-up or their yachts. I don't know whether they have them or they haven't them. But they seem to have done pretty good, and they seem to have planned to do pretty good.

Look at these Killen letters, before the book ever came out, it shows what was in the mind. This is analyzing, this is bad faith for you, this is all you can do. I couldn't even put a light up here, blue or any other color, and dissect out their intent, but I can see their motive. Maybe some of her motive is aggrandizement, maybe some of the motive of some of these other people is that they like to be heard, maybe they like to lead people. They also got a financial reward out of it, or they wouldn't have kept it going.

About these Donald letters—$11,000—why, they criticize us for bringing evidence into the case like that. It was evidence that Mrs. Ballard knew that letter was going to be read by Marjory [994] Ballard and Portia Terry. There is nothing wrong about that. Mrs. Ballard didn't let her hair down. She hasn't very often.

Donald Ballard has let his hair down. He has admitted that this is a fake. In 1940, when his deposition was taken, Donald Ballard was asked, not by me, not by my good colleague, Mr. Lazarus, whom the defense don't like very well because he talks about facts, but by someone else that hadn't a thing to do with the Government—not a thing to do with the Government, and this indictment had never been presented to any grand jury—whether he had had any experiences with Saint Germain. "No." He was telling the truth then. Everybody that said a thing about Donald Ballard on the stand was a liar, he would have you believe.

Why, gentlemen, if this movement, this activity, was all they claim it was, if they had the faith in it that they claim they have, why don't they stand on it? Why don't they read from it?

Gentlemen, I am tempted to read from the Bible. I was told that I probably should not. Please do not hold this against me for doing so.

Matthew 24, 24:

> "For there shall arise false Christs and false prophets and shall shew great signs and wonders; insomuch that, if it were possible, they shall deceive the very elect."

I wonder if Mr. Cassiere ever read that to any of the students? I wonder if that isn't an outline of our case—falsity and the utilization of the United States mails.

Let's go back to Mrs. Killen. 1933. Gentlemen, I don't know precisely when this scheme started. I don't think it is material as to when precisely it started. A scheme to defraud was a scheme to defraud those people who, if they could be misled to give them their money, to buy their books, to buy these charts, to buy all they had, and it kept building and building and building—just [995] like the proverbial snowball, it picked up, and it is going to go faster if they can get out too.

Look here, gentlemen. They refer in one of these letters to Mrs. Killen:

> "If you thought the manuscript wonderful before, you certainly would think them marvelous now since the elaboration."

Now how in the world would you elaborate on the words of an ascended master? Gentlemen, it would be like me trying to elaborate on Revelations or upon the Psalms.

But look. See what they had in their mind at the beginning:

> "Spalding told us last year there had been two and one-half million copies of the Lives and Teachings of the Masters of the Far East sold. Then surely each one of mine will do as well."

Don't you see anticipation there? Don't you see what was in their mind? Doesn't that show commercialism? Does that show that someone is just trying to spread the light, spread the light—$11,000 in five months for an extravagant son. I don't care whether Marjory Ballard made him spend it or who made him spend it; he spent it, he had it, and he liked it. And the pie was good. The plums were worth plucking, and they all plucked them, and they know it.

I don't believe what they say. I have a right, the same as with any other witness. They don't believe my witnesses. I don't believe any witness of theirs, but read the literature and see where you are right.

Take these Killen letters, asking this lady for a hundred dollars if you haven't got the $3,000. Gentlemen, they have the audacity to say, "Can you borrow the amount for one or two years?"

No, they didn't get it from her. That is one person they didn't defraud. But they had the scheme and the artifice and the design [996] to defraud here.

Go back to "The Magic Presence." As I said before, there is no Thief of Bagdad riding around on any magic carpet. Those are facts, and facts that they knew had occurred and went over into '33, but they represented them, they put them off on these people as being true, actual experiences—all the words couldn't be any more certain.

I want to tell you about Harry Sieber just a little bit more. Harry Sieber was the man that gave them the idea about the love gifts. Why, the letter—here it is gentlemen—which picks it up:

> "You would always be ready to let the individuals know that love gifts could be accepted, but the messengers themselves may not even suggest it."

Of course not. It is a good idea. Let somebody else do it for you. It is more adroit.

Why I don't contend they went out here with a gun and took money from people. If they had, they would have been, charged with burglary or robbery. Gentlemen, there was a match king known as Krueger, a very respectable man until it was found out he was a defrauder.

There was a man named Insull. There was a man named Whitney, who was president of the Stock Exchange. Respectable people. They maybe

didn't look like criminals—I don't know what a criminal looks like—I don't think they have any particular face. Mr. Peterson tell us to go over here and look at the criminals, or two, three-time losers.

Well, they had their bites and they don't give them any more. Too, every criminal has to have their first time. Defrauders! The most diabolic mode of defrauding people—and I say this with sincerity. A man can invest his money in gold stock, in oil stock, [997] and be defrauded. He could still go out and get more money if he is still in good health. But, gentlemen, when your faith is shattered and when people such as these, apparently many of them have feelings deeper than I have any right or have any consciousness of being able to understand, when they are misled under these representations, they are left in a quandary. They don't know just where to turn. They are suspicious of all things of this nature. The eternity itself is being utilized by these people as a medium and a mode of obtaining money.

I am going to refer for a moment to this picture. Before doing so, gentlemen, I was criticized because I asked Mrs. Schinn if her mother wasn't an old lady, couldn't speak English very well. She came to court. Mr. Cannon subpenaed her. She came to court. Incidentally, she had been in court here all along on a couple of occasions. I didn't want to put her on the stand because, after all, there can only be so much evidence. We don't want

to go on forever. I thought the daughter, it would be less of an ordeal on the daughter to put her on the stand than the mother, but she said she was 77 years of age. My goodness does she have to be as old as Methuselah for Mr. Cannon to think that she is old?

And he had her testify here, gentlemen. You heard her. I am not going to talk about it. If that lady understands very clearly, then I am mistaken. I think I was trying to be kind to her, but maybe I wasn't.

Mr. Mosher told you that he saw in Mr. Ballard's possession in 1929 or 1930 a picture similar to this (exhibiting). You recall that testimony. Now a picture very similar to this, excepting it is more indistinct, is to be seen in "Unveiled Mysteries." (Exhibiting) You have seen it many times.

Here is the original. (Exhibiting) You remember the testimony. He made her his own witness, Mrs. De Carranza, and then tried to impeach her after she had been made his witness. She confirmed just what the daughter had said. Everything. I wonder what Saint Germain [998] feels like, having a Rosicrucian model alongside of him? But nevertheless you will remember that that is what the testimony was.

Now, gentlemen, you take this picture and you take a fine artist like Mr. Sindelar—and he is a good artist—he didn't have this big one, he didn't need it, he is too good, but he takes this little picture—he had only been in the movement a

month; he hadn't even been made a messenger—but they come forth and tell you (and this falsity if there ever was one):

> "Saint Germain revealed himself to Mr. Sindelar previous to and while he was painting Saint Germain's likeness and he has said that it is splendid.
>
> "(Signed) THE BALLARDS."

Gentlemen, take the picture, take the scroll, take the symbols above, and if you don't want to believe Mrs. Schinn and her mother, or if you want to believe this lady who couldn't pronounce the name of Annie Besant, Cora Sheffield, a woman who didn't want to tell you her age—who I don't believe, and I don't think you do either—if you want to believe that lady, that she saw a picture like this in 1899, go ahead and believe it. It is an incidental point. But if there had been a work or a book out that had that in it, the picture of Saint Germain published, why wouldn't they have brought it to you? Why they have searched everywhere. They would have brought you a book which would have shown a copyright back at that time. But it wasn't true. That woman didn't tell the truth.

These other two ladies I think probably did tell the truth excepting they weren't sure of the year. Mrs. De Carranza said that in 1916 her picture was protographed at Cretona. One of the ladies said she saw it at Cretona, at the Theosophical or Rosicrucian Society, but at any rate, doesn't it show

that the Ballards would pick up anything to lure the people on? They didn't [999] even have a picture of their Saint Germain.

You have heard of the word "bally-hoo", gentlemen. This is the first time I have heard of "Ballard-hoo." And that is what it is.

Go back to some of these Sieber letters, because they are significant. They show commercial sales. 33⅓ percentage. Willing to split with a business manager. Saint Germain said "We should have one dollar per copy clear."

Well, I don't know, gentlemen. Believe it, if you want to. In the face of all this evidence you know that it isn't true. You know they didn't believe it to be true.

> "Harry, I am the channel that has made all this possible, and I do not intend to be swallowed up by this terrible commercial thing that has always forgotten the originator of a thing from which others have received millions."

Does that show what he was thinking of? Mrs. Ballard typed them. She had knowledge.

They had knowledge of the death, all of them, of Mr. Ballard, that he didn't make his ascension, and still they continued on, these people here who have made a good thing out of this movement.

Gentlemen, I am going to go to another subject matter, and I do it with deference because I know that you have heard this over and over again, but

I would be derelict, I believe, in my duties if I did not mention these things in view of the fact that you have heard six hours of addresses from very able men, very able attorneys. I am not saying that in flattery. I have respect for their ability. Three of them I know very well. But neither counsel are on trial. The evidence is all we are interested in.

"Do not believe us, prove us."

Mr. Lazarus, by a slip of the tongue, said, "doubt us." He said "Do not believe us, doubt us." I feel that should have been [1000] their full warning.

Why, gentlemen, they tried to bring that forth and then they have Saint Germain saying that these messengers have full authority and power of the ascended masters, that they know everything. Would you doubt anybody that knows everything? The Great Cosmos dictates and says that if you doubt these people or those who spread doubts are blinding themselves with that to which prison walls of your earth has no comparison.

Gentlemen, one of these says—now, listen; this is Saint Germain talking, and these people are very much concerned over Saint Germain——

> "The light compels me to say to you that after today, July 16, 1939 (they must have been getting a lot of doubt around that time; remember that a little before that Mrs. Bliss left them, the Ballards must have known that lots of doubt was creeping in) from all students or those who have claimed to be who

doubt the messengers, myself or the reality of this great light, all their assistance will be withdrawn."

And these people, if they believed that Saint Germain was going to withdraw his assistance, it was a serious thing.

Gentlemen, I believe that you will be instructed that you cannot speculate upon the verity of whether or not ascended masters may or may not exist, but, gentlemen, you will be entitled to know and to determine whether or not they believed they did exist, or whether or not these ascended masters are nothing more or less than these defendants talking to suit their own purposes. And, taking the evidence as a whole, you cannot escape any other conclusion.

Why, they write a letter to Mrs. Ferguson, telling her that they expect to be on the ray and that they believe that she will be appointed a messenger. A short while later, within two weeks, [1001] Saint Germain appoints the Fergusons as messengers. Isn't that convenient?

Now the old Colonel Bailey. In the summer of 1935 he was named as their representative out here in California, and then in October of 1935 they write him a letter and tell him that he has full authority and everybody is to follow him, and of course, they don't do anything, not a thing, unless they have the full support of Saint Germain, unless they talk to Saint Germain; but just five or six weeks later Saint Germain writes this fine Colonel

Bailey, the Australian officer who was a medical officer, 75 years of age, dismisses him. Now do you believe that an ascended master would have such a judgment as that, a man that he places just a few weeks past, that he certainly must have analyzed, would he dismiss him? Why, no, it is nothing more or less than he had a mind of his own, he was interfering with some of the things that the Ballards thought, and they write:

> "Your earth span is very short. Make your peace with your God and call to the Lord for forgiveness."

Threatening a man. Mrs. Ballard said that that wasn't a threat, to say your earth span is very short. I would like to hear one of her definitions of a threat. Gentlemen, I believe it would oust each and every one of us from this room.

Mr. Neukom: Gentlemen, only a half an hour more and tomorrow you will hear from his Honor.

This "Magic Presence" is so convincing to me that I can't help going back to it. I don't mean that the book is convincing, but the proof of the case is so convincing. I just want to read you one more passage because I promised that I would talk about tipping:

> "So I went direct to the transportation office and after considerable argument and tipping finally [1002] secured passage."

Now, gentlemen, there was nothing fantastic about that book and Mrs. Ballard—Government's

Exhibit 105; this Woodard statement—knows that Mr. Ballard was in Chicago in November of 1931, and all the evidence points to the fact that he must have been there from then on until he started out in October 1934, and that shows bad faith and that is all we have to prove. Sure the burden is on us. We proved to you beyond a reasonable doubt that these defendants are guilty of using the mails to defraud. That doesn't mean to some mathematical certainty. It means just like I said before, and I am going to say it again. It means just good old common ordinary horse sense. That is all it means. Maybe we would have been better if there had been other people who had a little more of that. Maybe these people wouldn't have been defrauded.

Gentlemen, the statute was made to protect the credulous the same as the intelligent. It was made to protect against every form of fraud whereby the mails were used in the furtherance of that scheme and artifice to defraud, and it covered this type of case.

Now, gentlemen, Mr. Ballard died the latter part of December 1939, the same as all people will die. In the first issue of "The Voice" which comes out, apparently—the February 1st at least—after his death, they announce there is going to be forthcoming a picture of Mr. Ballard at $2.50, $3.50 and $25. We have told you this, but these are the issues in the case.

Persecution, martyrs: those aren't the issues. War—that isn't an issue. Whether or not Mr. Fer-

guson was or was not in the court room, those are not issues. Whether we call Mrs. DeCarranza or don't call her, those aren't the issues. Whether we get letters by one manner of means or whether they don't like the way we get them, those aren't the issues. Whether Mr. Gysi just straightened out this "Mighty I Am Presence" or whether somebody heard it one [1003] time or not, different, those aren't the issues in the case. How Mr. Cannon would like to lead me into an alley and try to get me to talk to you for all my time on those things, because he knows that they aren't the issues!

Gentlemen, I have tried a few mail fraud cases myself, and I know that I have a duty to perform to prove the allegations in this indictment, and that is what we are doing and we are staying with the evidence.

In the next month's issue of "The Voice"—I don't know whether Saint Germain said this or not—but just to show you:

> "The photographs of our beloved messenger have been definitely prepared and charged by him and us to render tremenduous service to all who use them for contemplation."

Telling people about this $25 picture of Mr. Ballard. He is dead, and they come out now with this picture. It is charged and it conveniently says also that it straightens people out about using pictures of someone eles that is supposed to have ascended, because probably somebody had a picture of Mr. Kelly they got free. They didn't have to pay for

that one. Mrs. Ballard didn't want anyone to think that picture had any force so she has to come out with something like that. Why? Gentlemen, pick up these magazines from the beginning to end. Pick them up and just look at the advertisements. Look at them throughout, all money, extra postage to be paid. They don't solicit. They don't advertise. Well, I don't know what you call it, but when you use the name of Jesus, the man of Galilee, the Nazarene, to sell your charts, you have thought of something that even the national advertisers, and the best, never thought of to try to get people to buy your books. I don't know whether Jesus came to the Ballards here, and you are not going to decide that. There is no way that any of us will know that until we see our Maker. But I think it is very strange that the language used here that [1004] purports to be the language of Jesus appears to also be in the same language as Mr. and Mrs. Ballard used, that Mr. Ballard used in his Mount Shasta letters. Maybe Jesus has changed His way of speaking. Why in the world would Jesus be so interested in selling the books of these persons? If that isn't solicitation, I don't know what it is.

Oh, no, it isn't telling people to give me your money. It is more *adoit*. But let's see; Jesus is saying this—I copied this, gentlemen, because it is a lot of work to pick up all of these magazines, and set them out, but this is exactly as it appears in the magazine, the February 1936 issue of "The Voice."

"I urge the students everywhere, with all the love at my command, to forget everything else you have ever studied."

Jesus is speaking.

What could they have in their minds other than but one thing—I believe to forget the Holy Bible, the book that they now would endeavor to comfort themselves with. That book will give them comfort, nor should that be deprived from them. But that shouldn't change the proposition that they have defrauded people and should suffer the consequences.

We have toleration and feeling for all people, and I have it for them. It isn't pleasant to prosecute people and don't think it is. Mr. Cannon said the hard side is the defense. Gentlemen, if you have a heart in you, it isn't entirely so. It is hard to prosecute people, and that is true.

Jesus again says—oh, no, no, that isn't Jesus. The Goddess of Purity says:

"Henceforth I shall join your beloved Saint Germain in charging my purity into every book that the messenger autographs."

You have heard about the autographing of the books. Why, people [1005] thought there was something special about this autograph. Naturally, that had a significance.

No, they weren't content with just Jesus saying they never made a mistake, hadn't made one single mistake from the beginning, but they had to have the Goddess of Eriel, the ascended master, say it.

Jesus again in the February 1937 "Voice" said, "Discard everything they have ever studied."

Now, do you think they believed it? Do you think they thought Jesus said that? These Bible students who, apparently, knew every word from the Bible as they would have you believe? Can they find you anywhere in the Scriptures where the man who chased the moneychangers from the temple ever said words of that type or character?

We have just got human concepts, gentlemen. I don't want you to be intolerant of these people but I want you to use your good sense. I want this part of the United States to no longer be the part that people more or less smirk about because of some ideas when people go forth and try to defraud someone under the name of God Almighty.

Jesus again says, "I ask all to adhere 100 per cent to the teachings of the I Am."

Now, if you adhered 100 per cent to something, it is awfully hard for me to see where you have got any percent left for anything else, and they knew that wasn't true. Miss Majerus, the book salesman who contends she only made the small amount that she did, she could write checks on the Saint Germain Press. Betty Mundy didn't even tell you how much she made. She was on the stand. She made up these financial reports. Oh, you have seen them. You have heard from them. Thousands and thousands of dollars going by her way. Draw your own conclusions.

Donald Ballard gets on the stand and he doesn't

try to explain [1006] anything about this movement and he is an accredited messenger. Does that look like good faith? Does that look like he believed that he had the fantastic experiences that are explained in "Unveiled Mysteries"? Gentlemen, these people can believe anything they want to. We stand here with the idea to protect people in their desire to believe what they believe and care to believe, but when you publish something which is a fantasy, which is gossamer, which has no foundation and which you know hasn't any foundation, all of you know doesn't because you can look at this evidence and see from all of it that it builds itself so clearly to the point that they knew they were perpetrating a fraud. Then you should sell it under true colors, but if you sold it under true colors you wouldn't get any bidders, because the actresses that they are, the actors that they are, they had no fear of that witness stand. I know some people do have fear of a witness stand; but don't you think they had any fear of that witness stand. They were anxious to get up there because they talked a lot. They thought they were going to be able to sell their story to you, but they didn't.

They haven't bothered to even read very much from these books to you. Gentlemen, there are lots of good principles in these books. The Ballards haven't got any copyright on goodness. We don't claim that they don't have good philosophies in many of these books. That isn't what they are on trial for. They are on trial for these false represen-

tations. You will recall, gentlemen, that some people stated they bought other additional sets of books because they were told not to loan them. Well, maybe Mr. Cassiere didn't want to let me have his magazine, and maybe I have destroyed the radiations in it. I think that was by-play. I think that was just acting. That wasn't any old magazine he had; that was one he had writen on just recently. It was a new one. But he thought that was sincerity, he thought he could befuddle you where you would [1007] believe him. Mrs. Ballard tried the same thing. She tried to give you all kinds of explanations, but when you get back to the books, they are clear.

Let's take a look at healing. I don't think we have read this one to you before.

> "There are thousands and thousands of elderly people in America today, who will cause the appearance of age to disappear from their bodies. Please accept this and let it do its perfect work."

Look at them, gentlemen. Could they have believed it? I am not making fun of people because they grow old, but when you say there are people who are 60 years of age who in six weeks will be in their fullest bloom of youth, or words to that effect, and you can't make it work on yourself, you can't keep yourself from dying—you can save everyone else in the world but your religion isn't good enough for you—then you are a falsifier—and if the

word rings, I don't care—you are a cheat, you are a charlatan, and you are a religious racketeer, and I mean it. I haven't just tried to throw words at you; I have given you evidence.

I tried, with Mr. Lazarus' very fine assistance, to conduct this case like a gentleman. I was not intentionally at any time, nor were we at any time, unkind to any witness. We brought out what we could. If we felt a witness wasn't telling the truth, of course, I am going to endeavor to bring out from them the truth. That is my duty. You people are helping to pay some of my salary, and I think you know you don't want people around that aren't doing their duty.

And, gentlemen, we presented the facts here as best we were able to. We have confronted you with an allegation pertaining to the subject matter of ascension, and it hasn't been answered, I don't think.

We have brought you here the subject matter of precipitation, [1008] and it is convincing that these people believed that once this foolish questioning doubt was removed that jewels and gold could be precipitated.

Why, they had a whole discourse on gold. We have read it to you several times. And there is nothing fantastic about it. It is on pages 118 and 119. It is bait. And the people believed that.

Mrs. Ballard didn't even deny that incident about Mrs. Bernard's jewel that Mr. Gysi told you about. He said she claimed it was precipitated. She did

admit that she didn't precipitate anything but just a few rays of light. There hasn't been another soul that precipitated another thing, and they won't precipitate it. Although there are 40,000 just about to—that is what they write—come on! Come on!

Why, I read you a discourse here about the portals of the domes of a certain church as described in one of the books, the gold on it that was precipitated from the universal. The cakes, the gold in the hand. All of those things were definite, gentlemen, very, very definite.

You will remember that Mrs. Hudson, one of their witnesses, gave you an explanation of precipitation, or an instruction that she had received, and I believe that I read it to you. I think it was on page 101.

Now, this is one of their witnesses telling you what they read, and this certainly sounds like what Mrs. Bliss tried.

> "There are several steps in the process from which every student can use at any and all times. The practice does bring visible, tangible results when really applied."

Nobody has been able to do it.

Gentlemen, the healing. Thousands are supposed to have been healed.

These form letters—I am closing now; I am not taking off; [1009] I am just calling that to your attention—these form letters, gentlemen, that were sent out—all evidence of bad faith.

This blue record that Dr. Moor says there is no therapeutic value that he knows of as to blue itself; that nobody has testified to has even cured anything, not even dandruff. This blue records shows an entirely reckless disregard of the truth, a bait.

Cataclysm. There has been definite representations by these people that they saved certain portions of the world from cataclysms.

K-17 and his submarines that saved the Panama Canal.

The black magicians.

Their music compositions.

Gentlemen, solicitation is very prominent in this case by the means in which they used it. It was a little different, but it exists in this case. All in all, the representations that the Government has made in this case, we feel have been established beyond any possibility of doubt. We feel that we have sustained the burden of proof.

We find Donald Ballard, way back in 1935, writing letters which show that he had knowledge, even though he was young, and continuing on, giving discourses. The evidence is here that he played a very vital part in this.

Mrs. Ballard is undoubtedly guilty. Donald Ballard is undoubtedly guilty. Mr. Cassiere is undoubtedly guilty. In this order, gentlemen, is the way in which I think they fit in. Betty Mundy, she was always at the side of Mrs. Ballard. She knew, or was charged with knowledge of the fraud that was being perpetrated upon the people.

Mr. Stickell took in over $7,000 in love gifts alone in his first year. I don't know what he took in thereafter.

Don't be bothered over these account books again, gentlemen, when I have shown you how we couldn't believe them. And there are [1010] other books. Don't think I would fall into that trap. They wanted my auditor. They could have had him. They had their books, if they had wanted to have brought them in. You will remember that there was a stipulation that they had been returned to them.

Now, gentlemen, more can be said, but to say more would serve no useful purpose. I ask that you gentlemen recognize that there is a very serious responsibility imposed upon you. And that isn't just so many words. There is some uniqueness to this case, although it is not one of first impression by any means.

You can whitewash these people, let them go forth with your verdict of acquittal, or with a disagreement—I don't want you to hang, either—if you feel that that is your duty, if you feel, after considering this evidence, considering the instructions of his Honor, who has carefully guided this case to this point; but I feel, and I would like to have you feel so, too, that your verdict be a warning to those who use false representations on the subject matter of religion as a means for their own personal gain.

Gentlemen, do not feel that because the subject matter of religion has been brought in here that it

is none-the less a crime. The veneer of religion does not free these people from false representations. Let your verdict be such that all men may worship their Maker as they see fit, that they may attend the most humble chapel, church, hall, tabernacle, cathedral, whatever mode or type of religion they intend to follow or study or worship under, but that when they do they know they are not being mulct—mulct and deceived—by those who would take sacred principles for their own purposes.

Let's not destroy religion; let's keep it here. Remember that all men are subject to the laws of our land, and as long as they are subject to the laws of our land, we will have the democracy that we all cherish.

I do thank you. [1011]

Thereupon the Court proceeded to instruct the Jury. Said instructions are set forth at length as follows:

"The Court: Gentlemen of the jury: This is an action by the United States of America against Edna W. Ballard, Donald Ballard, Betty O. Mundy, Paul Stickell, Louise Majerus and William J. Cassiere. An indictment was found and returned by the grand jury on the 9th day of April, 1941, consisting of twelve counts. It is alleged in the first eleven counts of the indictment that the defendants did devise a scheme or artifice to defraud and for ob-

taining money and property by means of fraudulent representations, pretenses and promises from certain persons, and others whose names were to the grand jury unknown.

The Court has dismissed the first count of the indictment against each and all of the defendants, and that count is withdrawn from your consideration. The twelfth count is the conspiracy count. The statute prohibits conspiracies to violate a law of the United States. The Government charges that the specific statute which the defendants conspired to violate was the statute prohibiting the use of mails to defraud.

It is alleged that for the purpose of executing this scheme and artifice to defraud, and in the attempt so to do, that the defendants, placed, or caused to be placed, specified letters, or other matter, in the United States Post Office to be sent and delivered by such post office to the persons to whom said mail matter should be directed, or that defendants caused to be delivered certain specified articles according to the direction thereon, all for the purpose of furthering said scheme or attempting so to do.

The indictment charges that "during the early part of the year 1930, the exact date of which is unknown to the grand jury, and continuously thereafter up to and including the date of the filing of this indictment, in the Southern District of California and within the jurisdiction of this Court, the defendants and divers other [1012] persons whose names are to the jury unknown, did unlaw-

fully, knowingly and wilfully devise and intend to devise a scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent representations, pretenses and promises from a large number of persons, hereinafter called the 'persons intended to be defrauded,' and that class of persons who could or might be induced by means of any of the fraudulent or false devices, representations, and promises hereinafter mentioned, to purchase the books, magazines, pictures, articles, and other paraphernalia offered for sale by the defendants, and each of them, and to become followers, or who might be induced to accept the teachings and movement sponsored by the defendants, commonly known as the 'I Am' movement, and who might be induced to give, send, and pay their money and give other things of value to said defendants, among whom were: Margaret H. Schall, Allen C. Radcliffe, Silvia Bisplinghoff, Maud Hill, Lillian M. Shissler, William I. Ferguson, Tom Stevens, Ernest C. Ricord, Muriel Bliss, Lucille C. Siefort, D. R. Baldwin, and Gladys E. Kemp, and divers other persons whose names are to the grand jurors unknown, including all of that class of persons in the state of California and elsewhere throughout the United States whom the said defendants would and could induce, persuade and entice to become members and followers of a certain organization or movement, organized and operated by the defendants, and by them designated and hereinafter referred to as the

'I Am' movement, which said scheme and artifice was and is in substance as follows, to-wit:

"(a) It was part of the said scheme and artifice to defraud, that the defendants would and did create, organize and operate a certain organization or movement known as the 'I Am' movement, and by means of false and fraudulent representations, pretenses and promises, hereinafter more particularly set forth, solicit, induce, encourage, persuade and entice the persons to be defrauded to become members and followers of the said 'I Am' movement.

[1013]

"(b) It was further part of the said scheme and artifice to defraud that the defendants would and did form, organize, dominate and control a corporation designated and known as the Saint Germain Foundation, an Illinois corporation, and that the defendants would and did arrange for the election of the defendants Donald Ballard, as president, Paul Potter, as vice-president, and Edna W. Ballard, as secretary and treasurer of the said Saint Germain Foundation.

"(c) It was further part of the said scheme and artifice to defraud that the defendants by means of false and fraudulent representations, pretenses and promises, and devices, hereinafter more particularly set forth, would and did solicit, induce, encourage, persuade and entice the persons intended to be defrauded to give, donate and contribute to the said Saint Germain Foundation sums of money and other things of value.

"(d) It was further part of the said scheme and artifice to defraud that the defendants would and did form, organize, dominate and control a corporation known and designated as the Saint Germain Press, an Illinois corporation, and that the defendants would and did arrange for the selection of the defendants Donald Ballard as president, Paul Potter as vice-president and Edna W. Ballard as secretary and treasurer of the said Saint Germain Press.

"(e) It was further part of the said scheme and artifice to defraud that the defendants would and did by means of false and fraudulent representations, pretenses and promises, solicit, induce, encourage, persuade and entice the persons to be defrauded to purchase from the said defendants various books, charts, pamphlets, magazines, and other written and printed matter published by the said Saint Germain Press.

"(f) It was a further part of said scheme and artifice to defraud that the defendants would and did by means of false and fraudulent representations, pretenses and promises, sell and cause [1014] to be sold to the persons to be defrauded various pictures, charts, paraphernalia and divers other articles.

"(g) It was a further part of said scheme and artifice to defraud that the said defendants would and did arrange for, establish and maintain branch offices, meeting rooms, and reading rooms in various cities and towns throughout the United States, including: Los Angeles, California; San Francisco, California; Chicago, Illinois; Washington, D. C.;

Philadelphia, Pennsylvania; New York City, New York; Boston, Massachusetts; Cleveland, Ohio; Denver, Colorado; Salt Lake City, Utah; Fort Worth, Texas; Dallas, Texas; West Palm Beach, Florida, and other principal cities throughout the United States; and that defendants would and did arrange for and conduct meetings, classes and lectures at the aforesaid branch offices and meeting rooms and reading rooms for the instruction of the persons intended to be defrauded, in the principles, precepts and doctrines of the 'I Am' movement.

"(h) It was a further part of the said scheme and artifice to defraud that the said defendants would and did arrange for and conduct radio programs and broadcasts over various radio stations in the United States for the instruction of the persons intended to be defrauded in the principles, precepts and doctrines of the 'I Am' movement.

"(i) It was a further part of the said scheme and artifice to defraud that the defendants, for the purpose of soliciting, inducing, encouraging, persuading and enticing the said persons intended to be defrauded to become members and followers of the aforesaid 'I Am' movement and for the purpose of soliciting, inducing, encouraging, persuading and enticing the said persons intended to be defrauded to give, donate and contribute sums of money and other things of value to the defendants and the aforesaid corporations dominated and controlled by them, and for the purpose of soliciting, inducing, encouraging, persuading and enticing the said per-

sons [1015] intended to be defrauded to purchase from the defendants and corporations dominated and controlled by them, the aforesaid books, pamphlets, charts, and divers other articles heretofore mentioned would, in the aforesaid meetings, lectures, radio broadcasts and through and by means of letters, books, pamphlets and divers other written and printed matter, falsely and fraudulently represent to the persons intended to be defrauded, in substance and effect as follows, to-wit:

"(1) That the defendant Guy W. Ballard had attained supernatural state of self-immortality, which condition enabled him to conquer disease, death, old age, poverty, and misery; whereas in truth and in fact the defendants well knew that the said Guy W. Ballard had not attained such a state of self-immortality which would enable him to conquer disease, death, old age, poverty, or misery, but was subject to disease and death common to mortal man, and did in fact die on December 29, 1939, in the city of Los Angeles, California, following an operation performed upon him;

"(2) That the defendants falsely represented that Guy W. Ballard, now deceased, alias Saint Germain, Jesus, George Washington, and Godfre Ray King, had been selected and thereby designated by the alleged 'ascended masters,' Saint Germain, as a divine messenger; and that the words of 'ascended masters' and the words of the alleged divine entity, Saint Germain, would be transmitted to mankind through the medium of the said Guy W. Ballard;

whereas in truth and in fact the defendants well knew that the said Guy W. Ballard was not a 'divine messenger' and all of said representations so made were false and fraudulent, and the defendants and each of them well knew that defendant Guy W. Ballard had no such divine or supernatural power;

"(3) That the defendants represented that Guy W. Ballard, during his lifetime, and Edna W. Ballard and Donald Ballard, by reason of their alleged high spiritual attainments and righteous [1016] conduct, had been selected as divine messengers through which the words of the alleged 'ascended masters,' including the alleged Saint Germain, would be communicated to mankind under the teachings commonly known as the 'I Am' movement; whereas in truth and in fact the defendants, and each of them, well knew that none, neither, nor any of the three above designated persons had in fact achieved a high spiritual attainment; and whereas in fact none, neither, nor any of the said three designated persons had in fact lived a life either prior to the date set forth in the herein indictment or continuously up to and including the filing thereof, which said life adhered to and consisted of righteous conduct;

"(4) That the defendants and each of them represented that Guy W. Ballard, his widow, Edna W. Ballard, alias Saint Germain, Jesus, Joan of Arc, Lotus Ray King, and Chanera, and Donald Ballard,

the son of Guy W. Ballard and Edna W. Ballard, who was also known as Lafayette and Edona Eros Ballard, had by supernatural visitation been accorded a supernatural state of self-immortality of body and also had been appointed messengers of divine entities and 'ascended masters;' and that it was only through the medium of one, either or all of said designated persons that the teachings and principles of alleged 'ascended masters' and of divine entities would be transmitted to mankind; whereas in truth and in fact the defendants well knew that said representations pertaining to the alleged self-immortality of Guy W. Ballard, Edna W. Ballard, and Donald Ballard were false and fraudulent; and that the defendants well knew that the said representations as to the ability of one or either of said persons to transmit the messages of divine entities and of 'ascended masters' to mankind were false and fraudulent, and that all of said designated persons were mortal persons without any supernatural powers;

"(5) That the defendants represented that the teachings, precepts, doctrines, and principles published and promulgated by the [1017] defendants under the movement 'I Am' were the only channels through which the alleged spiritual teachings or words of the alleged Saint Germain and other 'ascended masters' would be given to the world. The defendants represented that the said words and teachings promulgated under the movement known

as the 'I Am' movement were absolutely essential to the salvation of mankind, which said teachings and doctrines are too voluminous to be set forth herein and for that reason are omitted by the grand jury; that the defendants well knew that said alleged representations were false and fraudulent and had no foundation for representing to persons intended to be defrauded that said teachings, doctrines, and precepts were absolutely essential to the salvation of mankind;

"(6) That the defendants represented that Guy W. Ballard during his lifetime, and Edna W. Ballard and Donald Ballard had attained a supernatural state of self-immortality, which condition enabled them, and each of them, to be entirely free from ailments common to man, and to conquer disease, death, old age, poverty, and misery, which power or condition and supernatural state the defendants, and each of them represented they could and would transmit to others willing to pay therefor or willing to part with other things of value therefor to the defendants, for the false and fraudulent purpose of securing money or other things of value from the persons intended to be defrauded; whereas in truth and in fact the defendants, and each of them, well knew that none, neither, nor all of said above designated named three persons had any such power, supernatural ability, or condition; and that they well knew that they had no such supernatural ability, power, or condition to transmit to others the ability to conquer disease, death, old age,

poverty, and misery; and that all of said representations were false and fraudulent;

"(7) That the defendants, and each of them, represented that Guy W. Ballard, during his lifetime, and Edna W. Ballard and Donald Ballard had, by reason of supernatural attainments, the power [1018] to heal persons and ailments and diseases and to make well persons afflicted with any diseases, injuries, or ailments, and did falsely represent to persons intended to be defrauded that the three designated persons had the ability and power to cure persons of those diseases normally classified as curable and also of diseases which are ordinarily classified by the medical profession as being incurable diseases; and did further represent that the three designated persons had in fact cured either by the activity of one, either or all of said persons, hundreds of persons afflicted with diseases and ailments; whereas in truth and in fact the defendants, and each of them, well knew that none, neither, nor all of said designated persons had the power to cure or heal mankind of diseases or ailments, and in truth and in fact knew that neither of said designated persons had in fact ever cured any person suffering from curable or incurable diseases or ailments, but said representations were made for the purpose of acquiring domination and implicit belief among the followers of said movement so as to acquire a powerful influence over said persons and to cause the persons intended to be defrauded to believe that one, either or all of

said designated persons had divine power of a supernatural nature;

"(8) That the defendants, and each of them, represented by direct representations and by innuendos, worded and delivered in such a manner as to cause a belief among persons willing to accept the teachings of the 'I Am' movement, that Guy W. Ballard, during his lifetime, and Edna W. Ballard and Donald Ballard, and each of them, had, by reason of divine origin, acquired a great healing power and did represent to the followers and students of said movement that said followers might also acquire such healing power and be able to achieve perfect bodies and heal themselves of all human ailments if said followers would give implicit obedience to the precepts, principals, teachings and doctrines of the 'I Am, movement; whereas in truth and in fact the defendants, and each of them, well knew that none, neither, nor any of said designated Ballards had any such power [1019] to heal and did not in fact have the power to transfer to others their alleged power to heal persons of human ailments and their alleged power to achieve perfect bodies free from disease common to mankind;

"(9) That the defendants, and each of them, further represented as a part of said scheme and artifice to defraud the persons intended to be defrauded, that the three designated persons, to-wit: Guy W. Ballard, Edna W. Ballard and Donald Ballard, had a divine and supernatural ability to

bring forth from a supernatural state money, riches, and other material needs necessary to mankind, which power or condition and supernatural state the defendants represented that they could transmit to others willing to pay therefor or willing to part with things of value therefor, whereas in truth and in fact the above designated defendants well knew that none, neither, nor all of them had any such supernatural power or ability of precipitation and all of said representations were false and fraudulent;

"(10) That the defendants, and each of them, did publish and sell and cause to be published and sold over a period of approximately six years last past, continuously up to and including the filing of the herein indictment, books, wherein and whereby the defendants, and each of them, falsely represented to the persons intended to be defrauded that said books were the result of divine visitations and dictations by the alleged Saint Germain and other alleged supernatural entities appearing in various supernatural visitations to one, either, or all of the defendants Guy W. Ballard, Edna W. Ballard, and Donald Ballard; that the defendants represented said books contained the divine instructions for the salvation of mankind; that among such books were those published under the name of 'Unveiled Mysteries' and 'The Magic Presence'; that the defendants represented that Guy W. Ballard, Edna W. Ballard, and Donald Ballard actually encountered the experiences pertaining to each of

their said names as related and set forth in said books, whereas in [1020] truth and in fact none of said persons did encounter the experiences; that the defendants, and each of them, represented that the alleged Saint Germain and various other alleged 'ascended masters' too numerous to mention, communicated to mankind solely through the medium of one or more of the aforesaid designated defendants; that the defendants did endeavor to and did sell copies of said books to the persons intended to be defrauded under the afore-alleged representations, knowing at all times that said alleged representations with respect to their origin and alleged divine inspiration were false and fraudulent, and fully knowing that said books were not divinely inspired but were in fact the writings of one or more of said designated defendants, together with extracts and the substance of material and incidents from occult and metaphysical writings of others, persuading persons intended to be defrauded that, in their aim and desire to acquire salvation and self-immortality, they must purchase from said defendants said books;

"(11) That the said defendants over a period of the seven years last past and up to the date of the return of this indictment did publish, circulate, and sell magazines, booklets, circulars, letters, 'edicts,' 'decrees,' and musical compositions, circulating and selling the same among the persons intended to be defrauded upon the false representations that said writings or compositio as afore-

said were divinely inspired and dictated by supernatural entities or 'ascended masters' and were a part of the medium by which persons intended to be defrauded could obtain divine salvation, knowing full well that all of said publications were man written and that said representations were false and fraudulent;

"(12) That the defendants, and each of them, represented both orally and by writings that it was solely by reason of their teachingss and their embodiment in the 'I Am' movement and by reason of their divine power and influence that the United States of America was saved from destruction, and that by divine inspiration there had [1021] been accorded to them the ability to maintain the sovereignty and general welfare of the United States of America; that by reason thereof they represented to the persons intended to be defrauded that it was absolutely necessary that complete obedience be had to their teachings, commands, and decrees for the safety, welfare, and sovereignty of the United States and for divine justice to be had in governmental activities and the activities of industry; that the defendants well knew that all of said representations were false and untrue and had no foundation in fact and that the welfare and safety of the United States did not depend upon persons following the teachings or commands of their movement;

"(13) That the defendants represented that reproductions of a painting of a picture represented

by the defendants as being an actual picture of the 'ascended master' Saint Germain, was the result of a visitation by Saint Germain before one Charles Sindelar; and that the said Saint Germain did appear before the said Charles Sindelar for said painting and did represent to the persons intended to be defrauded and the followers of said movement that the purchase of said picture from the defendants was desirable in their aim and hope to achieve salvation; whereas in truth and in fact the defendants well know that said painting was copied from an existing picture painted approximately twenty years theretofore by Theresa de Carranza and that the reproductions were made for the purpose of sale;

"(14) That the defendants falsely represented that the purchase of certain charts, phonograph records and articles, sold by the defendants to the persons intended to be defrauded and the students of the said 'I Am' movement, would bestow upon said purchasers great blessings and rewards in their aim to achieve salvation; whereas in truth and in fact the defendants had no foundation for said representations and well knew that said representations were false and fraudulent, and that said articles, chart and records were man-made [1022] and had no abliity to aid in achieving salvation;

"(15) That the defendants, and each of them, falsely represented from time to time that there would be an actual visitation in one or more designated cities or places in the United States of

'ascended masters' or divine entities, which said divine entities would appear in physical form before the assembly of followers of said movement, and by reason thereof said defendants acquired a hypnotic control, power, and domination over the persons intended to be defrauded, to-wit: the followers of the 'I Am' movement, causing many of said followers to reach such a high state of emotionalism that they were willing to travel from far distances at great expense to themselves under the hope and expectation that they would view the physical appearance of the alleged 'ascended masters' and other divine entities, said defendants knowing full well at all times that all of said representations were false, fraudulent, and were made solely with the aim, purpose and desire of acquiring domination and control over the followers of said movement; that subsequent to any such meeting in which the defendants represented that divine entities would appear in physical form, which appearance in fact never occurred, the defendants, and each of them, would lull the followers of said movement into blind belief that said divine entities had failed to appear because of an alleged lack of harmony existing among the followers of said movement present at said proclaimed time for appearance;

"(16) That the said defendants falsely represented that a cataclysm or the end of the world was approaching within the life span of persons now living and that there was no necessity to provide

for the future or to save money or other things of value possessed by the persons intended to be defrauded and that in lieu thereof the followers of said movement should withdraw their funds from the banks, life insurance companies, and other financial institutions accepted by normal persons as safe places for the deposit [1023] of their money, and should turn said moneys over to the defendants in the form of so-called 'love gifts' to be made directly to the defendants or to corporations above named, owned, controlled, and dominated by the defendants; that the said defendants had no reason to believe that the end of the world or a cataclysm was about to occur but made such representations as a part of their program to command implicit and unquestioning obedience of their followers;

"(17) That the defendants falsely represented that any person who criticized or questioned the teachings of the defendants, and each of them, would be denounced or punished by 'ascended masters' and would thereby create fear, confusion, and obedience among the followers of said movement; whereas in truth and in fact the defendants, and each of them, well knew that said criticism or questioning of the teachings of said movement would not be punished by 'ascended masters' and also not denounced by alleged 'ascended masters';

"(18) That the defendants falsely represented to the followers of said movement and the general public that if said persons would follow the prin-

ciples, doctrines and precepts of the 'I Am' movement and the teachings of the defendants, prior to death said persons would achieve the ability to make their actual physical ascension in their physical, tangible bodies and would in fact ascend and not die, and that during such ascension said persons would have the ability to and would associate with alleged divine entities and 'ascended masters' and would at their pleasure be able to return from their ascended position to earth and re-ascend if they so desired. And did further represent that persons who had accepted the teachings and doctrines taught by the defendants had in fact so ascended in their physical, tangible and earthly bodies; whereas in truth and in fact the defendants, and each of them, had no foundation for such representations and knew that said representations were false and fraudulent; [1024]

"(19) That all of said representations, pretenses, and promises were made, or caused to be made, by the defendants to the said persons to be defrauded, and as a part of the said scheme and artifice to defraud the said persons intened to be defrauded, as aforesaid; that said representations, pretenses, and promises were made, and caused to be made by said defendants to said persons intended to be defrauded through, and by means of, certain oral statements, books, magazines, letters, radio broadcasts, writings, and papers so worded, constructed and expressed as to deceive, and they were then and there intended to deceive the said persons intended to be defrauded,

and any person who might hear or receive them, which oral statements, books, magazines, letters, radio broadcasts, writings, and *appers* are too numerous and too voluminous to be set forth in this indictment, and for that reason the grand jurors aforesaid omit the same;

"(20) At the time of making all of the aforealleged representations by the defendants, and each of them, the defendants, and each of them, well knew that all of said aforementioned representations were false and untrue and were made with the intention on the part of the defendants, and each of them, to cheat, wrong and defraud persons intended to be defrauded, and to obtain from persons intended to be defrauded by the defendants, money, property, and other things of value and to convert the same to the use and the benefit of the defendants, and each of them; and the defendants intended and did, in fact, by reason of the aforementioned representations, enrich themselves from the class of persons above described as the persons intended to be defrauded and obtain money, property and other things of value which the defendants, and each of them, intended to and did convert to themselves under the guise and pretense of salaries, loans, bonuses, 'love gifts,' donations, expensive and luxurious living accommodations, and expensive traveling facilities; * * *"

The counts in the indictment were based upon [1025] United States statute which is commonly denominated as the mail fraud statute. The statute

is rather lengthy but so far as this trial is concerned, it charges in substance as follows:

"Whoever having devised or intended to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations or promises—shall, for the purpose of executing such scheme or artifice or attempting so to do, place or cause to be placed any letter, postal card, package, writing, circular, pamphlet, or advertisement, whether addressed to any person residing within or outside the United States, in any post office—or other letter box of the United States or authorized depository, or mail matter to be sent or delivered by the post office establishment of the United States, or shall take or receive any such therefrom—or shall knowingly cause to be delivered by mail according to the directions thereon, any such letter, writing, etc.—shall suffer the penalty provided for by law."

The first of the offense, that is, an essential element of it is, first, the devising of a scheme to defraud, and, second, the utilization of the United States mail in the furtherance of said scheme.

One man or woman may devise and accomplish it without assistance, but all who with criminal intent join themselves to the principal scheme are subject to the statute although they may not know completely their own share in the wrong-doing. The law is, that whoever directly commits any act constituting an offense, as provided in any of the laws

of the United States, or who aids, abets, counsels, induces or procures its commission, is equally a principal, so that whoever knowingly aids, abets or induces the doing of any act constituting a violation of the statute involved is just as guilty as the principal schemer.

As I have heretofore said, the Government charges in this indictment that the defendants, in the furtherance of this alleged [1026] scheme and artifice, have sent through the United States mail or placed in the United States mail, or caused to be delivered through the United States mail, 10 separate communications or letters. The placing of a letter in the United States mail or sending it, or causing it to be delivered in furtherance of a scheme to defraud, completes the offense, and each of such communications put, or caused to be delivered, in the United States mail in furtherance of the scheme to defraud constitutes a separate offense.

In a general way, the charges as to the counts two to eleven are that the defendants entered into this unlawful scheme, as alleged, and mailed the ten communications set forth in the indictment in furtherance of the scheme alleged.

Neither the fact that the defendants have been indicted nor the indictment itself is evidence of their guilt, and cannot prejudice them in any way in this trial.

The indictment is the mere formal charge upon which they are brought to trial. The indictment is found by a United States grand jury upon evidence presented to it and in the judgment of the

grand jury warranted the finding of an indictment and required that the defendants be placed upon trial before a petit jury to determine the truth of the allegations of the indictment. It is merely the method by which men who are charged with crime are placed upon trial.

A defendant is presumed to be innocent at all stages of the proceeding until all of the evidence presented shows him to be guilty beyond a reasonable doubt. And this rules applies to every material element of the offense charged. Mere suspicion will not authorize a conviction.

No juror in this case should permit himself to be, to any extent, influenced in this case against the defendants because or on account of such indictment's being on file; an indictment is a mere means of bringing a charge before a court for the determination of its truth by a court and jury.

[1027]

On the issue of the guilt or the innocence of the defendants you should totally disregard every averment of fact contained in the indictment. The facts necessary to convict must be proved by testimony and evidence and cannot be established by the action of the grand jury in the returning of the indictment.

To this indictment the defendants and each of them have entered a plea of not guilty and upon the issue thus joined the burden rests upon the government to prove to the satisfaction of each juror beyond a reasonable doubt every material allegation of the indictment.

You are instructed that unless you find beyond a reasonable doubt that the defendants were engaged in a scheme substantially as alleged in the indictment you must acquit the defendants, without regard to whether or not the letters and other material specifically described in the various counts of the indictment were mailed. It is not sufficient for the prosecution to prove some other or different scheme to defraud or some other or different scheme to obtain money or property by means of false and fraudulent pretenses, representations or promises, but the prosecution must prove, before it can ask a conviction at your hands, a scheme substantially as laid in the indictment.

The defendants are not on trial for having devised a scheme other than that laid in the indictment, and even though you be convinced beyond a reasonable doubt that defendants or some of them may have devised a scheme to defraud which is not substantially the same as the scheme alleged in this indictment you would nevertheless return a verdict of not guilty.

You observe that there are six different defendants on trial here, all charged with having violated certain laws of the United States. It goes without saying, of course, that though all of the six different defendants are charged jointly, yet the guilt or innocence of each defendant must be determined by the jury [1028] separately. Each defendant has the same rights as though he or she were being tried alone.

In the course of these instructions the words "Defendants" and "Defendant" will, for sake of economy, be frequently used, and unless some particular defendant is named, it will be understood that each defendant is thus specifically referred to; and any instructions given referring to "Defendants" or "Defendant" generally, will be understood and considered by you as referring to each defendant separately and individually.

The letters and writings set forth in the different counts of the indictment must be separately considered, and a defendant or defendants may be convicted or acquitted on all or any of the different counts, as you may in your judgment determine. Having the indictment before you for examination, you will examine particularly the separate charges therein set forth.

It is not necessary that any or all of the defendants did, in person, mail or cause to be mailed the letters, writings circulars or magazines described in the indictment. It is sufficient if, pursuant to the directions of one or any of the defendants, that their agent, or some other person, may have in fact actually mailed, or caused to be delivered, the letters and writings involved.

It is also true that if any one, or any of the defendants may have mailed any of the writings or letters described in the indictment (which you may find they did in fact mail or caused to be mailed) and the other defendants were a party to the scheme or artifice to defraud, or the conspiracy so

to defraud, as described in the indictment; if such in fact did exist, then all of the defendants who were a party to any such scheme or conspiracy are equally liable, even though they in fact did not actually direct the use of the United States mails; provided, further, that such defendants were parties to the scheme to defraud, or the conspiracy, as charged, at the time any such letters were mailed or caused to be delivered in [1029] the United States mail.

It is no excuse that the actual mailing may have been done by a clerk or agent, or some other person, if in truth and in fact it was pursuant to the directions of either one or all of the defendants as charged in the indictment.

It is not essential that the Government prove each and every false pretense or representation alleged to have been made or intended to be made, but it is essential that proof be made that the defendants did devise a scheme to defraud of substantially the kind and character alleged, and that one or either of them employed any one of the false and fraudulent representations and pretenses alleged, and in the furtherance of such scheme used the United States mails in the manner alleged in the indictment.

You are instructed that it is no excuse or defense to those on trial that others not on trial or not indicted appear from the evidence to be implicated in the scheme alleged in the indictment. You are to consider the guilt or innocence of those

on trial without regard to the culpability of others not on trial.

One of the elements which you must find from the evidence to exist beyond a reasonable doubt before you may convict any defendant, is that such defendant had the intention to deprive one or more of the persons described in the indictment as constituting the class to be defrauded of their money or property by means of false or fraudulent pretenses, misrepresentations, or promises.

The Constitution of the United States provides:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." This, in very simple language, guarantees that every man shall have the right to worship God according to the dictates of his own conscience. This is one of the best, if not the very best, gifts of a single blessing man ever conferred upon humanity. The Constitution of the United States, and all the provisions thereof, should be guarded by the [1030] courts with the most sacred care to see that its protecting influence shall be enjoyed by every person entitled to its benefits. And, in protecting the Constitution, it is just as much the duty of the courts to see that it does not come into disrepute by permitting it to be made a cloak or shield for fraud or other abuse.

This case does not present a question of the lawfulness of the calling of a mental healer, or of a religious healer, or whether or not mental science or prayer healing is a fraud, but it presents the ques-

tion of the good faith of the defendants. You should consider this case with the distinct understanding that the practice of mental healing, suggestive healing, or healing by prayer, or other religious process, is, in Federal law, as lawful as healing by drugs, or by any science or practice. As to the right to use the postal establishment of the United States, no discrimination is made between those whose vocation is healing, whether they be allopathists, homeopathists, osteopathists, mental scientists or Christian Scientists, or the 'I Am' doctrine.

Notwithstanding the fact that by law one's individual freedom of worship cannot be challenged, it is also true that all persons in this country, including the leaders or formers of any philosophical movement, activity, or religion, are subject to the Federal laws the same as any other person and this, of course, includes that statute of the United States forbidding the use of the mails in the execution of a scheme to defraud.

And I charge you that even though a person or persons are advocating a religious activity, that they must do so in good faith and without making any substantial misrepresentations with the intent to deceive. In other words, religion cannot be utilized as a cloak or as a vehicle for the perpetration of a fraud in violation of the United States law; although legislation restricting the free exercise of any person's religion is forbidden, it does not follow that fraudulent practices under the guise of religion are immune from [1031] prosecution. It is

for you to say, therefore, in this case, from all the facts and circumstances, whether the defendants—one, either, or all of them—entered into or devised a scheme or artifice for the purpose of defrauding those who could be induced to buy the books and other articles they offered for sale, or who could be induced to give money or other things of value to the defendants, as charged in the indictment, or whether the defendants acted in good faith.

The defendants are not on trial for evolving or devising an improvident or impractical scheme, even though you should find their activity or movement to be such. Nor are the defendants on trial for mere errors of judgment; nor are they on trial for devising a new religion, if it be such, with whose tenets you may not agree. The question here is not, insofar as the particular doctrines taught by the defendants are concerned, whether or not those doctrines are sound, or even plausible, but whether or not they were promulgated in good faith and not for the purpose of fraudulently obtaining money from others.

If, in promulgating those doctrines, even though the defendants received money therefor and used the money as charged, the defendants were acting in good faith, they were not, as to them, engaged in a scheme to defraud. If you have reasonable doubt as to whether or not the defendants were acting in good faith, you should acquit them or those of them whom you find may have acted in good faith.

The term "religion" has reference to one's views of relations to his Creator, and to the obligations they impose of reverence for his being and character, and of obedience to his will. It is often confounded with the cultist or form of worship of a particular sect, but is distinguishable from the latter. The First Amendment to the Constitution, in declaring that Congress shall make no law respecting the establishment of religion, or forbidding the free exercise thereof, was intended to allow everyone under the jurisdic- [1032] tion of the United States to entertain such notions respecting his relations to his Maker and the duties they impose as may be approved by his judgment and conscience, and to exhibit his sentiments in such form of worship as he may think proper, not injurious to the equal rights of others, and to prohibit legislation for the support of any religious tenets, or the modes of worship of any sect.

With man's relations to his Maker and the obligations he may think they impose, and the manner in which an expression shall be made by him of his belief on those subjects, no interference can be permitted, provided always the laws of society, designed to secure its peace and prosperity, and the morals of its people, are not interfered with. However free the exercise of religion may be, it must be subordinate to the criminal laws of the country, passed with reference to actions regarded by general consent as properly the subject of punitive legislation.[1]

An illustration may make the point more clear. It was the teaching and practice of a religious cult at one time to offer human sacrifice. Neither the Government nor the defendants, in this case, would contend that that practice could find protection under the Constitution of the United States.

The defendants cannot be prevented or restrained from honestly and sincerely entertaining the views the indictment alleges they pretended to entertain, nor from honestly and sincerely endeavoring to persuade others, by any legitimate means, to embrace the same notions, but the defendants cannot pretend to entertain the views therein specifically alleged for the false and fraudulent purpose of procuring money or other things of value from third parties by the use of the United States mails.

The question of the defendants's good faith is the cardinal question in this case. You are not to be concerned with the religious belief of the defendants, or any of them. The jury will be called upon to pass on the question of whether or not the defend- [1033] ants honestly and in good faith believed the representations which are set forth in the indictment, and honestly and in good faith believed that the benefits which they represented would flow from their belief to those who embraced and followed their teachings, or whether these representations were mere pretenses without honest belief on the part of the defendants or any of them, and, were the representations made for the purpose of procuring money, and were the mails used for this purpose.

The defendants in this case made certain representations of beliefs in a divinity and in a supernatural power. Some of the teachings or representations of the defendants might seem extremely improbable to a great many people—for instance: the appearance of Jesus to dictate some of the works which have been introduced in evidence; the incident testified to by one of the defendants, Mrs. G. W. Ballard, that she shook hands with Jesus and that frequently Saint Germain and other 'ascended masters' appeared to defendant, Mrs. Ballard, and gave certain dictations—these and other similar representations and statements might seem highly improbable to many people. Whether these incidents actually happened or not is not for your consideration. The religious beliefs of these defendants are not an issue in this court and not for your consideration. The issue is: "did these defendants honestly and in good faith, believe that these incidents actually happened?" If they did they should be acquitted. If these defendants did not believe these incidents actually happened and did not believe that Jesus came down and dictated or that Saint Germain came down and dictated, and did not believe the representations and statements which they wrote, nor the statements and representations which they preached, and used the mails for the purpose of getting money, or other things of value, you should find them guilty. Approximately 300 exhibits have been introduced on the part of the government and the defendants. The books, magazines, letters and

decrees are all before you for your consider- [1034] ation, and these exhibits contain the teachings or the philosophy and the representations of the defendants. The defendants have not withdrawn a single word of what has been written or what has been preached. These exhibits contain the entire conception of the defendants' relationship with the diety or, as it is used here, with the "I Am Presence."

It is alleged in the twelfth count of the indictment that the defendant now on trial, together with Guy W. Ballard, Carolie Hendrickson, John C. Koster, Harry N. Rogers, and Ted Dahl, named as co-conspirators but not indicted, conspired, combined, confederated and agreed among themselves and with each other to devise the scheme and artifice to defraud and to obtain money and property by means of false and fraudulent pretenses, representations, and promises, as alleged in the first count of the indictment, and also to use the mails for the purpose of executing that scheme; in other words, it is charged that the defendants now on trial and certain other persons above-mentioned but not indicted conspired to form the scheme and artifice to defraud described in the first count of the indictment, and also conspired to carry out that scheme, or attempt to carry it out, by the use of the United States mails.

Under the United States statutes it is constituted a crime against the United States if two or more persons conspire to commit any offense against the

United States, and one or more of such parties do any act to effect the object of the conspiracy. There are, therefore, two elements which go to make up the crime. The first is the act of conspiracy to commit an offense against the United States, and the second is the doing of some act by one or more of the parties to effect the object of the conspiracy.

Conspiracy is a combination of two or more persons, by some concerted action, to accomplish some criminal or unlawful purpose, or to accomplish some purpose not in itself criminal or unlawful by criminal or unlawful means. [1035]

Mere knowledge or acquiescence of the existence of a conspiracy is not sufficient to constitute one a party to a conspiracy. There must be an intentional participation in the transaction.

However, the combination may be by express understanding or agreement between the parties, but it need not be so arrived at. It may be arrived at by tacit and common assent, without specific mutual arrangement, as when parties work and act together under a manifestly common design or intent to effectuate a common unlawful purpose. Thus, if two or more persons by their acts and deportment, pursue a common project or design, by the same adaptable means, one performing one part of the common plot and another, or others, another part or parts thereof, so as to complete it, all with the view of attaining the object which they are pursuing, this will be sufficient to constitute a conspiracy.

There need not be even previous acquaintance,

nor is it essential that each conspirator should know the exact part or parts to be performed by the other or others in execution of the conspiracy. In other words, it is sufficient if two or more persons, corruptly and with knowledge of what they are doing, by their acts and conduct cooperate and work together and in unison, in pursuance of a common design or purpose, for the obvious effectuation or consummation of a common object, if that object be criminal in character or unlawful and this whether or not there was at any time an assembling of the parties or specific understanding between or among them. Of course, under the statute, one or more of the parties must have done some act to effect the object in view by them, in order to complete the offense or statutory conspiracy.

Conspiracy is a combination or agreement between two or more persons by concert of action *ot* accomplish some criminal or unlawful purpose, or some lawful purpose by criminal or unlawful means. In this case the charge is a conspiracy to accomplish an unlawful [1036] purpose, to-wit, the violation of a statute of the United States.

In every conspiracy, specific criminal intent, that is, the intent to accomplish or encompass an unlawful object, is an essential element of the crime. There can be no conspiracy without this unlawful or criminal intent on the part of each of the parties thereto. The actual criminal or wrongful purpose must accompany and form a part of the agreement, and it must be proved, as a substantive fact in the

case, to your satisfaction and beyond a reasonable doubt.

The understanding, combination, or agreement between the parties to effect the unlawful purpose charged, must be proved, because without such corrupt agreement or understanding there is no conspiracy.

It may be that there was a conspiracy—that is, a combination, agreement or confederacy among the defendants—to make use of the United States mails in furtherance of the business and affairs of these defendants and the corporations named; it may be that in execution of such agreement, the mails were so used, but unless a common and underlying intent of that confederacy was to defraud, the statute of the United States prohibiting a misuse of the mails has not been violated.

In order to establish the connection of any particular defendant with the conspiracy, such connection must be shown by facts or circumstances independent of the declarations of others; that is, by his own acts, conduct or declarations, and until this fact is thus established, he is not bound by the declarations or statements of others. The principle of law and the rule of evidence is that when once a conspiracy or combination is so established and the defendant is shown by independent evidence to be a party thereto, then he is bound by the acts, declarations and statements of his co-conspirators done and made in furtherance of the conspiracy, because, in that event, each is deemed to assent to or commend

what is done by any of [1037] the others in furtherance of the common object. The alleged connection of any one of the defendants with the alleged conspiracy, if any existed, must be shown by facts or circumstances independent of the statements of other defendants made in his absence, and that when once that connection is thus shown, then he becomes affected and bound by the declarations and acts of the other parties to the conspiracy, if any, made and done in the furtherance of the common enterprise, and during his connection therewith.

In view of the foregoing rule, therefore, it will be necessary for you to take up and consider the evidence as it relates to each defendant on trial, separately, and in considering whether or not he was a party to the conspiracy or agreement, if you find there was one, you are only to take into consideration his own statements, actions and conduct, and his own connection with the actions and conduct of others as shown by the evidence, independent of any statements or declarations made by others in his absence; and unless you find from such evidence that he was a party to *sh*uch conspiracy, if one existed, then it would be your duty to acquit him. If, however, you find that he was a party to such conspiracy, then the statements and declarations of his co-conspirators may be considered as if made by him.

You must not permit yourselves to use against the defendant, anything said or done outside the presence of such defendant, unless you believe from

the evidence, beyond a reasonable doubt, that at the time the things were said or done a conspiracy existed between the party saying and doing the things and the defendant to be affected thereby. In such a case it is only those things said or done in furtherance of the objects of the conspiracy which are chargeable against the other member or members of such conspiracy, or things said or done while executing the objects of said conspiracy, and being a part of the transaction then being done.

In the crime of conspiracy the acts and admissions of [1038] any one of the conspirators, while engaged in the effectuation of the object of the conspiracy, are deemed to be the acts and admissions of all, and all alike binding as to all. Not so if the acts or admissions are done or made previous to entering into the conspiracy or after the same has been dissolved, or the parties thereto have ceased their cooperation. In such case the acts and admissions are binding only upon the one acting or speaking. The offense charged in the indictment must be accomplished knowingly and with a corrupt purpose and motive to do some unlawful act or acts, as alleged in the indictment; that is, to commit an offense or offenses against the Government in transgressing the statute denouncing the use of the United States mails in connection with a scheme to defraud, which statutes I have heretofore explained (or read) to you.

Again, one who, after a conspiracy is formed, with knowledge of its existence and the purpose

thereof, joins therein and aids and participates in its execution, becomes as much a member thereof from that time as if he had been an original conspirator; but you must understand that one cannot be made a member of the conspiracy except by his own conscious acts and by his knowledge of the formation of such a conspiracy and his willingness and intention to participate therein. If, therefore, you should find that a conspiracy had originally been formed and that certain of the defendants subsequently had done things which were the object of such conspiracy, yet they would not be guilty of this charge unless in addition thereto you find that they consciously, knowingly and corruptly entered into the conspiracy that had originally been formed and that their acts were the result of a joint and corrupt concert of action.

The defendants meet the entire charge contained in the indictment with the assertion and claim upon their part that whatever they did and whatever representations they made, through the mails or otherwise, was done in entire good faith and in the sincere belief in the truth of whatever they asserted to be the fact. This claim on [1039] their part, as indicated hereinabove, unless overcome by the proof adduced in behalf of the government, negatives their guilt of the charge against them. The government asserts, of course, that in their conduct they were not actuated by good faith, but on the contrary were at all times moved and inspired by a disposition and intent to defraud, in the manner set out in the indictment.

"Fraud" as used in this connection, may be defined as an intentional perversion of the truth for the purpose of obtaining some valuable thing from another.

You are instructed that a scheme to defraud may accompany a legitimate business or movement, for it is well settled that a fraudulent scheme may be within the statute even though used in the prosecution of an established business, legitimate if honestly conducted, and does not only include those enterprises which by their very nature are unlawful.

You are instructed that no matter how seemingly fair and honest a scheme may appear, if the purpose of it is to defraud it is a violation of the statute which is aimed at every scheme designed in fact to defraud, where misrepresentations as to past or present facts are used or false promises made as to the future. It is with the purpose of preventing the post office from being used to carry fraudulent designs into effect that the statute was passed.

The separate intent of each defendant charged under the provisions of the law stated is a material element necessary to prove the offense as against them, and in arriving at a decision upon that question all the facts and circumstances shown in the case as touching the conduct of the defendants should be considered. If a man shall make to another a representation as to things which do not exist and it appears that he has no reasonable

ground to believe that the fact is as he states it, such statements and conduct are to be taken into consideration in determining whether an innocent misstatement was made in good faith, or whether the intent was that [1040] others were to be deceived and that the first person should reap a benefit and others suffer a loss. Criminal intent may be implied from the acts and conduct of an accused. His acts and his conduct, considered in their relation to the charge made, may establish satisfactorily a criminal intent, notwithstanding the declarations of a defendant that no such intent was present in his mind. On the other hand, if the statements alleged to have been falsely and fraudulently made by a defendant were made in good faith, and the defendant believed at the time or had reason to believe them to be true, they would not be evidence of fraud. However, a reckless statement of a thing as a fact, or which the narrator is ignorant, and as to which he has no honest belief as to its truth, may be considered as a false representation within the meaning of the law applicable to this case. The matter of the acts and intent of each defendant is to be separately determined by you. You may find one or more of the defendants guilty, or any or all not guilty, as you may determine the evidence warrants.

You are instructed, "that although a man might not be charged for his honest beliefs, however imbecilic the might be, it is not necessary to show that he disbelieved what he said. Some utterances are in

such form as to imply knowledge at first-hand, and the utterer may be liable, even though he believes them, if he has no knowledge on the subject. And all unconditional utterances, intended to be taken seriously, imply at least a belief, and, if the utterer does not believe them, they are false, though his mind be quite indeterminate as to their truth."

You are instructed that it is not a defense for the defendants to show that the persons who purchased the books and other articles they offered to sell, or who made contributions to one, either or all the defendants received a return for the money they so contributed, and that it is not essential to the commission of the offense covered by the mail fraud statute that there be on the [1041] part of the accused either expectation or realization of pecuniary gain to himself. It is enough if the accused be actuated by an intention to defraud the persons to whom the false statements or representations are made.

In other words, it is not necessary for the government to show that the articles purchased by the various students or the general public were worthless, as the extent of damage to the purchaser is not an element of the crime.

You are instructed that there can be an honest, though mistaken, judgment of the future from existing conditions. But there can also be alluring suggestions and predictions of what will come to pass, put forth without reasonable warrant, with the fraudulent intent to profit by inducing reliance

upon such representations made by the defendants among those who are credulous and uninformed. In other words, the statute pertaining to mail fraud not only refers to actual misrepresentations as to some existing fact but includes representations of allurement of a specious and glittering promise.

In this case if you find that the defendants, or either of them, with intent to defraud, devised a scheme and artifice to defraud and for the obtaining of money and property by means of false and fraudulent representations, I charge you that if you should so find beyond a reasonable doubt that it is no defense for the defendants to say that all the moneys or properties they obtained were utilized in expenses and in carrying out the activity which they were sponsoring for the law forbids the devising of a scheme to defraud, where, as a part of such scheme the mails of the United States are utilized, even though the defendants may have derived no personal profit and may have nothing left of that which they obtained. The offense is complete when the scheme has been devised for an unlawful purpose and the mails are utilized in furtherance thereof, even though the defendants ultimately may not have profited by virtue of their unlawful enterprise. [1042]

The declaration of the defendant given on the witness stand, that he believed any representations made by him to be true or that promises made by him were in good faith intended to be fully performed, is not conclusive on the question of good

faith and criminal intent. You must take the whole case as it is made by the evidence and from that evidence, including any declaration of the defendant made to the effect aforesaid, determine for yourselves whether in fact the representations, pretenses or promises were made in good faith or with fraudulent intent.

The mere fact that the scheme would not have deceived one of ordinary intelligence, should you find such to be the case, and the fact that it would only deceive the credulous does not relieve the wrongdoer from responsibility.

Because I have not particularly referred by name to each defendant, in discussing features of the case and the evidence, is not to be taken by you as an indication that I believe any defendant is entitled to less consideration at your hands than others. The whole charge as given you is intended to apply to the case of each defendant.

You will apply the instructions of the court to the case of each separate defendant, regardless of whether the separate names are expressed therein.

With reference, further, to this question of intent, you are instructed that if defendants honestly believed in the doctrines which they announced, then no matter how visionary their views may have been, no matter how ill-founded their conclusions may have been, no matter how much sheer incompetence in the exercise of business judgment may have been their portion, unless, in the making of the statement and representations complained of, they were

actuated by an intent to defraud, they are entitled to go free and your verdict should so determine.

The ultimate question of fact before you as a jury is [1043] as to the good faith of the defendants, and that question involves their belief in their representations and promises. While their belief is not the subject of direct proof, it may be ascertained from circumstances, and by proof of their actions and declarations. If the defendants were practicing their calling in good faith, the fact that they received compensation for their advice and services is of no consequence.

If the representations intended to be made, as alleged in the indictment, were false, and the defendant honestly believed them to be true, then such representations would not be fraudulent. If, however, such representations were false and the defendant, knowing their falsity or not believing them to be true, intended that they should be made to deceive and induce certain persons to whom they were to be made, to part with value, then said scheme was one to defraud.

You are instructed that even if you should find and believe that the representations intended to be made as alleged in the indictment, not only were made but were false, nevertheless, if the defendants so making them or responsible for their making, in good faith believed them to be true, then said representation within the meaning of the Federal Statute in question, would not be fraudulent and you would not be justified in inferring the existence of

a fraudulent intent on the part of the defendants because of their having been made. It is, of course, true that a fraudulent intent is never presumed; to the contrary the law presumes that all men are honest—in their motives, their dealings, their relations with one another; that they are ever actuated by good faith, and must not be adjudged to be in want thereof or to be inspired by fraud or an evil intent except upon proof of the same beyond a reasonable doubt. So, too, in this same connection, where a given transaction or series of transactions that may be called in question is reasonably susceptible of two different constructions—one that is fair and honest and in [1044] consonance with good faith, and the other dishonest and in keeping only with a fraudulent intent—then the law says that the jury must adopt the construction in favor of honest, fair dealing and good faith and reject the other looking to the contrary direction.

A defendant cannot be convicted if all of the evidence is as fairly consistent with his innocence as with his guilt. He cannot be convicted in the absence of an actual fraudulent intent, no matter how fanciful or unreal the teachings of the 'I Am' movement may appear to you, nor how inconsistent with sound judgment they may seem to you to be. The intent, you understand, is a question of fact at all times and must be found by you in the light of all of the evidence and beyond all reasonable doubt.

The good faith of the defendants or their bad faith in this matter is to be determined by their

several acts and declarations construed and interpreted by the conditions existing at the time the statements, representations or promises were made and as they appeared to the defendants at the time they were made, and not by the final result of the movement. The defendants are not on trial for evolving or devising an improvident, impractical or fantastic scheme, even though you believe the plan to have been such. They are not on trial for errors of judgment. They are on trial for a criminal offense and an essential element of that offense is an evil or criminal intent, which it is incumbent upon the government to prove to your satisfaction and beyond all reasonable doubt; and if, under all of the evidence, the government has failed to prove the existence of such evil or criminal intent in the minds of the defendants, then it is your duty to acquit.

Before you would be justified in finding the defendants had made false representations such as could be made the basis of finding them guilty in this case, you must find that whatever, if any false representations they made, were made with intent to defraud. An incorrect statement does not amount to fraud in law, unless the [1045] false representations were knowingly and wilfully made with fraudulent intent.

You are further instructed that by the words "overt acts" is meant the things which it is alleged in the indictment were done in furtherance of and to effect the objects of the conspiracy.

The purpose of the conspiracy may be continuous; that is, it may contemplate the commission of several offenses or overt acts. The crime is completed when an overt act effecting the object of the conspiracy is done by at least one of the conspirators. The phrase "overt act" merely means that it is an act done in furtherance of or to effect the object of the conspiracy apart from the conspiracy itself.

The overt act need not be a criminal act nor the very crime that is the object of a conspiracy. It must, however, accompany or follow the criminal conspiracy or agreement, and must be done in furtherance of the object of it.

A conspiracy, if once established or proved, is presumed to continue until the contrary is established.

All of the conspirators need not join in the commission of an overt act, for if one of the conspirators commits an overt act it becomes the act of all of the conspirators, but one—to be guilty of the crime of conspiracy—must join in the agreement. In the situation where a conspiracy has been formed the joiner thereof by a new member does not create a new conspiracy and does not change the status of the other conspirators, and the new member is as guilty as though he was an original conspirator.

One who commits an overt act with knowledge of the conspiracy is guilty even though he is absent when the crime which is the object of the conspiracy is committed. Each defendant's knowledge as

to the scope of the conspiracy may be limited and he need not know all the details of the plan or the operation. Each defendant need not have knowledge of all who are members in the [1046] conspiracy or of the part played by each of such members. In fact, a defendant may obtain utterly no reward and still be a party to the conspiracy. He must, however, know the purpose of the conspiracy, otherwise he cannot be found guilty.

In considering the credibility to be attached to the testimony of any witness, you have the right to take into consideration the nature and character of his testimony, and if you have a reasonable doubt as to the credibility of any witness whose testimony is essential to a conviction, you will resolve this doubt in favor of the defendants.

The rules of evidence ordinarily do not permit the opinion of a witness to be received as evidence. An exception to this rule exists in the case of expert witnesses. A person who by education, study and experience has become an expert in any art, science or profession, and who is called as a witness, may give his opinion as to any such matter in which he is versed and which is material to the case. You should consider such expert opinion and should weigh the reasons, if any, given for it. (You are not bound, however, by such an opinion. Give it the weight to which you deem it entitled, whether that be great or slight, and you may reject it, if in your judgment the reasons given for it are unsound.)

You are the sole judges of the credibility and the wieght which is to be given to the different witnesses who have testified upon this trial. A witness is presumed to speak the truth. This presumption, however, may be repelled by the manner in which he testifies; by the character of his testimony, or by evidence affecting his character for truth, honesty and integrity or his motives; or by contradictory evidence. In judging the credibility of the witnesses in this case, you may believe the whole or any part of the evidence or any witness, or may disbelieve the whole or any part of it, as may be dictated by your judgment as reasonable men. You should carefully scrutinize the testimony given, and in so doing [1047] consider all of the circumstances under which any witness has testified, his demeanor, his manner while on the stand, his intelligence, the relations which he bears to the government or to the defendant, the manner in which he might be affected by the verdict and the extent to which he is contradicted or corroborated by other evidence, if at all, and every matter that tends reasonably to shed light upon his credibility. If a witness is shown knowingly to have testified falsely on the trial touching any material matter, the jury should distrust his testimony in other particulars, and in that case you are at liberty to reject the whole of the witness' testimony. The defendant has offered himself as a witness and has testified in the case. Having done so, you are to estimate and deter-

mine his credibility in the same way as you would consider the testimony of any other witness. It is proper to consider all of the matters that have been suggested to you in that connection, including the interest that the defendant may have in the case, his or her hopes and his or her fears, and what he or she has to gain or lose as a result of your verdict. You are not limited in your consideration of the evidence to the bald expressions of the witnesses; you are authorized to draw such inferences from the facts and circumstances which you find have been proved as seem justified in the light of your experience as reasonable men.

A defendant is presumed to be innocent at all stages of the proceeding until the evidence introduced on behalf of the government shows him to be guilty beyond a reasonable doubt. And this rule applies to every material element of the offeense charged. Mere suspicion or mere probability will not authorize a conviction. A reasonable doubt is such a doubt as you may have in your minds when, after fairly and impartially considering all of the evidence, you do not feel satisfied to a moral certainty of the defendant's guilt. In order that the evidence submitted shall afford proof beyond a reasonable doubt, it must be such as you would be willing to act [1048] upon in the most important and vital matters relating to your own affairs. Reasonable doubt is not a mere possible or imaginary doubt or a bare conjecture; for it is difficult to prove a thing to an absolute certainty. You are to consider the

strong probabilities of the case. A conviction is justified only when such probabilities exclude all reasonable doubt as the same has been defined to you. Without it being restated or repeated, you are to understand that the requirement that a defendant's guilt be shown beyond a reasonable doubt is to be considered in connection with and as accompanying all the instructions that are given to you.

You are instructed that matters of fact, if any, which are left uncertain by the evidence, cannot be made certain to the prejudice of the defendant by inferance. In the absence of evidence, no inference can be drawn by the jury against the defendant; but, on the contrary, all the inferences and presumptions consistent with the facts proved are to be drawn and indulged in favor of the innocence of the defendant. No fact or circumstance upon which you may base a conclusion of guilt is sufficient, unless such fact or circumstance has been proved beyond a reasonable doubt and to the same extent as if the whole conclusion depended upon that one fact or circumstance.

If upon a fair and impartial consideration of all of the evidence in the case the jury find that there are two reasonable theories, supported by the testimony in the case and that one of such theories is consistent with the theory that the defendant is guilty, as charged in some one or more or all of the counts in the indictment and that the other of such theories is consistent with the innocence of the defendant, then it is the policy of the law, and the

law makes it the duty of the jury to adopt that rule which is consistent with the innocence of the defendant and in such case to find the defendant not guilty.

You are to consider the strong probabilities of the case. [1049] A conviction is justified only when such probabilities exclude all reasonable doubt as the same has been defined to you. Without it being restated or repeated, you are to understand that the requirement that a defendant's guilt be shown beyond a reasonable doubt is to be considered in connection with and as accompanying all the instructions that are given to you.

You shall not consider as evidence any statement of counsel made during the trial, unless such statement was made as an admission or stipulation conceding the existence of a fact or facts.

You must not consider for any purpose any evidence offered and rejected, or which has been stricken out by the court; such evidence is to be treated as though you never had heard it.

You are to decide this case solely upon the evidence that has been admitted by the court, and the inference that you may reasonable draw therefrom, and such presumptions as the law may deduce therefrom, as directed in my instructions, and in accordance with the law as I state it to you.

Unless you find from the evidence beyond a reasonable doubt that the defendant Edna W. Ballard was a party to the scheme or artifice to defraud

charged in the indictment on the date when any particular letter or other mail matter was placed in any post office or station thereof, or street or other letter box of the United States or authorized depository for mail matter to be sent or delivered by the post office establishment of the United States, you must find the defendant Edna W. Ballard not guilty with respect to any charge based upon the mailing of said letter or other mail matter; and unless you find that Edna W. Ballard was on the date of the commission of one of the overt acts described in Count 12—if you find beyond a reasonable doubt that such overt act was committed—a wilful party to the conspiracy charged under said Count 12, you must find the defendant Edna W. Ballard not guilty under Count 12. [1050]

Unless you find from the evidence beyond a reasonable doubt that the defendant Donald Ballard was a party to the scheme or artifice to defraud charged in the indictment on the date when any particular letter or other mail was placed in any post office or station thereof, or street or other letter box of the United States, or authorized depository for mail matter to be sent or delivered by the post office establishment of the United States, you must find the defendant Donald Ballard not guilty with respect to any charge based upon the mailing of said letter or other mail matter; and unless you find that Donald Ballard was on the date of the commission of one of the overt acts described in Count 12—if

you find beyond a reasonable doubt that such overt act was committed—a wilful party to the conspiracy charged under said Count 12, you must find the defendant Donald Ballard not guilty under Count 12.

Unless you find from the evidence beyond a reasonable doubt that the defendant Betty Mundy was a party to the scheme or artifice to defraud charged in the indictment on the date when any particular letter or other mail matter was placed in any post office or station thereof, or street or other letter box of the United States or authorized depository for mail matter to be sent or delivered by the post office establishment of the United States, you must find the defendant Betty Mundy not guilty with respect to any charge based upon mailing of said letter or other mail matter; and unless you find that Betty Mundy was on the date of the commission of one of the overt acts described in Count 12—if you find beyond a reasonable doubt that such overt act was committed—a wilful party to the conspiracy charged under said Count 12, you must find the defendant Betty Mundy not guilty under Count 12.

Unless you find from the evidence beyond a reasonable doubt that the defendant Paul Stickell was a party to the scheme or artifice to defraud charged in the indictment on the date when any particular letter or other mail matter was placed in any post office [1051] or station thereof, or street or other letter box of the United States, or authorized depository for mail matter to be sent or delivered

by the post office establishment of the United States, you must find the defendant Paul Stickell not guilty with respect to any charge based upon the mailing of said letter or other mail matter; and unless you find that Paul Stickell was on the date of the commission of one of the overt act was committed—a wilful party to the conspiracy charged under said Count 12, you must find the defendant Paul Stickell not guilty under Count 12.

Unless you find from the evidence beyond a reasonable doubt that the defendant Louise Majerus was a party to the scheme or artifice to defraud charged in the indictment on the date when any particular letter or other mail matter was placed in any post office or station thereof, or street or other letter box of the United States, or authorized depository for mail matter to be sent or delivered by the post office establishment of the United States, you must find the defendant Louise Majerus not guilty with respect to any charge based upon the mailing of said letter or other mail matters; and unless you find that Louise Majerus was on the date of the commission of one of the overt acts described in Count 12—if you find beyond a reasonable doubt that such overt act was committed—a wilful party to the conspiracy charged under said Count 12, you must find the defendant Louise Majerus not guilty under Count 12.

Unless you find from the evidence beyond a reasonable doubt that the defendant William J. Cassiere was a party to the scheme or artifice to defraud

charged in the indictment on the date when any particular letter or other mail matter was placed in any post office or station thereof, or street or other letter box of the United States, or authorized depository for mail matter to be sent or delivered by the post office establishment of the United States, you must find the defendant William J. Cassiere not guilty with respect to any charge based upon the mailing of said letter or other [1052] mail matters; and unless you find that William J. Cassiere was on the date of the commission of one of the overt acts described in Count 12—if you find beyond a reasonable doubt that such overt act was committed—a wilful party to the conspiracy charged under said Count 12, you must find the defendant William J. Cassiere not guilty under Count 12.

You must weigh*t* and consider this case without regard to sympathy, prejudice, or passion for or against any party to the action.

The attitude and conduct of jurors at the outset of their deliberations are a matter of considerable importance. It is rarely productive of good for a juror, upon entering the jury room, to make an emphatic expression of his opinion on the case or to announce a determination to stand for a certain verdict. When one does that at the outset, his sense of pride may be aroused, and he may hesitate to recede from an announced position if and when shown that it is fallacious. Remember that you are not partisans or advocates in this matter, but are

judges. The final test of the quality of your service will lie in the verdict which you return to this courtroom, not in the opinions any of you may hold as you retire. Have in mind that you will make a definite contribution to efficient judicial administration if you arrive at a just and proper verdict in this case. To that end, the court would remind you that in your deliberations in the jury room there can be no triumph excepting the ascertainment and declaration of the truth. You are instructed that if the judge has said or done anything which has suggested to you that he is inclined to favor the claims or position of either party, you will not suffer yourself to be influenced by any such suggestion. I have not expressed, nor intended to express, nor have I intimated nor intended to intimate, any opinion as to what witnesses are, or are not, worthy of credence; (what facts are, or are not, established;) or what inferences should be drawn from the evidence adduced. [1053] If any expression of mine has seemed to indicate an opinion relating to any of these matters, I instruct you to disregard it.

It is your duty as jurors to consult with one another and to deliberate, with a view to reaching an agreement if you can do so without violence to your individual judgment. To each of you I would say that you must decide the case for yourself but should do so only after a consideration of the case with your fellow jurors, and you should not hesitate to change an opinion when convinced that it is erroneous. However, you should not be influenced

to vote in any way on any question submitted to you by the single fact that a majority of the jurors, or any of them, favor such a decision. In other words, you should not surrender your honest convictions concerning the effect or weight of evidence for the mere purpose of returning a verdict or solely because of the opinion of the other jurors.

Upon retiring to the jury room you will select one of your number to act as foreman, who will preside over your deliberations and who will sign the verdict to which you agree. As soon as all of you shall have agreed upon a verdict, you shall have it signed and dated by your foreman and then shall return with it to this courtroom.

Two forms of verdict will be given to you, gentlemen of the jury, one finding each of the defendants guilty as charged in each of the counts, and one finding the defendants not guilty as charged on each of the counts.

(Conference between the Clerk and the Court)

The Court: Mr. Cross advises me that the two forms are stated on one single paper instead of two separate papers, so with that correction we will receive this blank verdict.

Mr. Cannon: May I approach the bench a moment with counsel?

(Conference between Court and Counsel at the bench)

The Court: So there will be no misunderstanding, the only [1054] part of Count I that has been dismissed by the Court commences on line 21 on page

14, and includes all of page 15 and all of Count I that precedes line 20 on page 14, is understood to be re-incorporated and applied to each of the following counts.

Is that satisfactory?

Mr. Cannon: That is satisfactory.

Mr. Neukom: Very well. [1055]

Exception No. 93

After the jury had deliberated and returned a verdict of guilty as against the defendants Edna W. Ballard and Donald Ballard, motion was made in behalf of defendants Edna W. Ballard and Donald Ballard for arrest of judgment and for new trial. Said motions are in words as follows, to wit:

"In the District Court of the United States in and for the Southern District of California, Central Division.

Before the Honorable J. F. T. O'Connor.

No. 14858-O'C.

Criminal

"UNITED STATES OF AMERICA,

Plaintiff,

vs.

EDNA W. BALLARD, et al.,

Defendants.

MOTION FOR NEW TRIAL

Come now the defendants Edna W. Ballard and Donald Ballard in the above entitled action, jointly and severally, and move the Court that the verdict in this action against them, and against each of them, be set aside and that they, and each of them, be granted a new trial, upon the following grounds:

1. That the Court erred in decisions of questions of law arising during the course of the trial.

2. That the verdict is contrary to the law.

3. That the verdict is contrary to the evidence.

4. That the verdict is contrary to the law and the evidence.

5. Because the verdict is against the weight of the evidence.

6. Because the evidence is insufficient to sustain or justify the verdict.

7. Because the facts stated in the indictment against [1056] these defendants do not constitute an offense against the United States.

8. Because the Court erred in admitting, over the objection of the defendants, evidence for the introduction of which no proper or any foundation had been laid.

9. Because of other errors of law occurring at the trial, more fully shown by the transcript herein, which transcript is hereby referred to and relied upon by the defendants herein.

Wherefore, the defendants, Edna W. Ballard and Donald Ballard, pray that the verdict herein may be set aside and that they, and each of them, be granted a new trial.

Dated February 3, 1942.

.....

(Edna W. Ballard)

.....

(Donald Ballard)

DAVID H. CANNON
650 South Spring Street
Los Angeles, California

AMES PETERSON
325 Los Angeles Stock Exchange
Office Building
Los Angeles, California

W. I. GILBERT, JR.
939 Rowan Building
Los Angeles, California

HORACE J. DONNELLY, JR.
Washington, D. C.

By .....

(David H. Cannon)

Attorneys for said Defendants.

Receipt is hereby acknowledged of a copy of the foregoing this 3rd day of February, 1942.

WILLIAM FLEET PALMER,
United States Attorney.

By .....
Deputy Attorney,
Attorney for Plaintiff."

[1057]

Memorandum of points and authorities was served and filed with said Motion for New Trial

"In the District Court of the United States in and for the Southern District of California, Central Division.

Before the Honorable J. F. T. O'Connor.

No. 14585-O'C.
Criminal

"UNITED STATES OF AMERICA,
Plaintiff,

vs.

EDNA W. BALLARD, et al,
Defendants.

MOTION FOR ARREST OF JUDGMENT

Come now the defendants, Edna W. Ballard and Donald Ballard, and jointly and severally move the Court to refrain from entering a judgment against them, or against either of

them, based upon the verdict rendered in this case upon the following grounds:

1. That the said indictment does not, nor does any count or paragraph thereof, state facts sufficient to constitute a punishable offense or any offense or crime under the laws or under the Constitution of the United States and particularly said indictment does not, nor does any count thereof, state facts sufficient to constitute a violation of Section 338 or Section 88 of Title XVIII of the United States Code.

2. That said indictment, and each count, is duplicitous, ambiguous, indefinite and uncertain and is insufficient to enable the accused to make a defense or to properly inform the said defendants, or either of them, of the offenses with which they stand charged, or to enable one of common understanding to know and understand the nature of the charges made against the said defendants, [1058] and each of them.

Dated February 3, 1942.

.....

(Edna W. Ballard)

.....

(Donald Ballard)

DAVID H. CANNON
650 South Spring Street
Los Angeles, California
AMES PETERSON
925 Los Angeles Stock Exchange
Office Building
Los Angeles, California
W. I. GILBERT, JR.
939 Rowan Building
Los Angeles, California
HORACE J. DONNELLY, JR.
Washington, D. C.

By .....
(David H. Cannon.)
Attorneys for said Defendants.

Receipt is hereby acknowledged of a copy of the foregoing this 3rd day of February, 1942.

WILLIAM FLEET PALMER,
United States Attorney.

By .....
(Deputy Attorney.)
Attorney for Plaintiff"

Memorandum of points and authorities was served and filed with said Motion for Arrest of Judgment.

Said motions were denied. The Court stated in respect thereto as follows:

The Court: I have given consideration, gentlemen, to both motions made by the defendants Edna W. Ballard and Donald Ballard, one motion for

a new trial and a motion for arrest of judgment. The motion for new trial will be denied and the motion for arrest of judgment will be denied and exceptions allowed to both defendants. [1059]

Mr. Cannon: On each matter, your Honor.

The Court: On each matter.

Thereupon the court proceeded to pronounce judgment.

[Title of District Court and Cause.]

ORDER EXTENDING TIME WITHIN WHICH TO PREPARE AND FILE PROPOSED BILL OF EXCEPTIONS.

Upon request of Messrs. Roland Rich Wooley, Joseph F. Rank and Ralph C. Curren, attorneys for defendants and appellants, Edna W. Ballard and Donald Ballard, the time for the preparation, serving and lodging of appellants' proposed bill of exceptions, and within which to prepare, serve and file their assignments of error for said appellants, all in connection with the appeal in the above entitled action, is extended to and including sixty (60) days from the date of the filing of the notice of appeal, to wit, to and including April 20th, 1942 and the time for the settlement of said bill and the filing thereof with the Clerk is hereby extended to the 10 day of May, 1942.

Dated February 26, 1942.

J. F. T. O'CONNOR,
Judge.

Approved as to form:

RALPH E. LAZARUS. [1060]

[Title of District Court and Cause.]

STIPULATION RE PREPARATION OF BILL OF EXCEPTIONS.

It Is Hereby Stipulated by and between the government, through Wm. Fleet Palmer, United States Attorney, and Ralph E. Lazarus and Norman W. Neukom, Assistant United States Attorneys, and the defendants and appellants, Edna W. Ballard and Donald Ballard, through their respective attorneys, Roland Rich Woolley, Ralph C. Curren, and Joseph F. Rank, that in the preparation of the bill of exceptions on appeal herein and in the preparation of the proposed bill of exceptions of appellants that only such portions of the letter exhibits need be incorporated in said bill of exceptions as were actually read into evidence by either counsel for the government or counsel for the defendants at the trial of the above entitled matter.

It Is Further Stipulated that as to all books, pamphlets, magazines, particularly the various issues of "The Voice" magazine, and as to any other documentary evidence introduced in evidence as exhibits by either party, other than the letter exhibits above referred to, that there need be in said bill of exceptions only reference made to the exhibit number and page wherefrom such reading took place, together with the designation as to which counsel at such time read therefrom.

It Is Further Stipulated that all exhibits in the above matter may be physically transmitted to the Circuit Court of Appeals for consideration in connection with the appeal.

It Is Further Stipulated that the bill of exceptions [1061] will provide that all exhibits are deemed to be a part of the bill of exceptions.

Dated: March 25, 1942.

WM. FLEET PALMER,
United States Attorney.

RALPH E. LAZARUS,
NORMAN W. NEUKOM
Assistant United States Attorneys.

By RALPH E. LAZARUS,
Attorneys for Plaintiff.

ROLAND RICH WOOLEY,
RALPH C. CURREN,
JOSEPH F. RANK,

By JOSEPH F. RANK,
Attorneys for Defendants.

The above stipulation is approved and it is so ordered.

J. F. T. O'CONNOR,
United States District Judge.

The foregoing bill of exceptions contains all of the evidence given or offered on the trial of the cause of United States of America, plaintiff, v. Edna W. Ballard and Donald Ballard, defendants, except such exhibits as pursuant to order and stipulation are to be deemed a part of the bill without being set forth in full therein, and said bill correctly shows the proceedings had on said trial and said bill of exceptions is correct in all respects and is hereby approved, allowed, settled and made a part of the record herein.

Dated at Los Angeles, California, this 8 day of May, 1942.

J. F. T. O'CONNOR,
Judge. [1062]

It Is Hereby Stipulated by and between the plaintiff and the defendants Edna W. Ballard and Donald Ballard in the above entitled action, through their respective counsel, that the foregoing bill of exceptions contains all of the evidence given or offered on the trial of the cause herein and correctly shows the proceedings had on said trial and that said bill of exceptions is correct in all respects.

Dated at Los Angeles, California, this 7th day of May, 1942.

WM. FLEET PALMER,
United States Attorney.
RALPH E. LAZARUS,
NORMAN W. NEUKOM,
Assistant United States Attorneys.
By NORMAN W. NEUKOM,
Attorneys for Plaintiff.

ROLAND RICH WOOLLEY
RALPH C. CURREN
JOSEPH F. RANK
By ROLAND RICH WOOLLEY
Attorneys for Defendants.

[Endorsed]: Filed May 8, 1942. [1063].

[Endorsed]: No. 10059. United States Circuit Court of Appeals for the Ninth Circuit. Edna W. Ballard and Donald Ballard, Appellants, vs. United States of America, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Southern District of California, Central Division.

Filed June 3, 1942.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

In the United States Circuit Court of Appeals for the Ninth Circuit

No. 10059

UNITED STATES OF AMERICA,

Appellee,

vs.

EDNA W. BALLARD and DONALD BALLARD,

Appellants.

SUBSTITUTION OF ATTORNEYS

Comes now David H. Cannon, Esq., one of the attorneys for the appellants, and by and with the consent of the said appellants hereby withdraws as such attorney, and substitutes in his place and stead Joseph F. Rank, Esq., and Ralph C. Curren, Esq., to be associated with Roland Rich Woolley, Esq., as attorneys for said appellants.

Dated: February 23, 1942.

DAVID H. CANNON.

We hereby consent to this substitution.

EDNA W. BALLARD AND
DONALD BALLARD,
By ROLAND RICH WOOLLEY
Their Attorney

We hereby consent to act as the attorneys for the above-named appellants.

ROLAND RICH WOOLLEY
JOSEPH F. RANK
RALPH C. CURREN

The foregoing substitution is hereby ordered.

Dated: February 24, 1942.

FRANCIS A. GARRECHT
Circuit Judge.

Akn. receipt this 24th day of February, 1942.

RALPH E. LAZARUS
Ass't. U. S. Atty.

[Endorsed]: Filed April 25, 1942. Paul P. O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

ORDER FOR TRANSMITTAL OF EXHIBITS

Upon the application of the appellants, Edna W. Ballard and Donald Ballard, and the stipulation of the parties, and good cause appearing therefor

It Is Ordered and Directed that the original exhibits introduced upon the trial of this action shall be deemed a part of the bill of exceptions settled by the District Court and transmitted to this Court upon the hearing of this appeal;

It Is Further Ordered that said exhibits need not be included in the bill of exceptions other than to include therein those portions of letters which were read to the jury in the course of the trial.

FRANCIS A. GARRECHT
Judge

Dated: March 31, 1942.

[Title of Circuit Court of Appeals and Cause.]

AFFIDAVIT OF ROLAND RICH WOOLLEY ON APPLICATION FOR ORDER TRANSMITTING ORIGINAL EXHIBITS.

State of California
County of Los Angeles—ss:

Roland Rich Woolley, being first duly sworn, deposes and says:

That in the course of the trial of the above entitled action exhibits were introduced, chiefly by the Government in the presentation of its case, which include among others the following:

7 Books between 200 and 300 pages in length
Copies of 40 issues of a Magazine "The Voice" published by the Appellants
3 Decree Books
5 Songs
Phonograph records
Large Photographs
Several Pamphlets
Approximately 400 pages of letters.
Paintings, Account Book, Form Book, Electrical Devices, etc.

In addition to the foregoing documentary evidence, oral testimony requiring approximately 5,000 pages of transcript was given; that it is not feasible for the appellants to include in the bill of exceptions the aforementioned documentary evidence in addition to a summary of the aforesaid oral testimony. For the purpose of facilitating the preparation and settlement of the bill of exceptions, counsel

for the government and the appellants entered into a stipulation, approved by the District Judge, a copy of which is attached hereto marked Exhibit "A", which it will be noted provides that the letters read from by counsel shall be included in the bill of exceptions to the extent that they were read to the jury and that where other documentary evidence was read to the jury, reference be made to the exhibit and page from which reading took place. That the cost of printing the bill of exceptions prepared in accordance with said stipulation is great and by reason of the number of books and documents introduced, the inclusion of more thereof would make the expense much greater and the bill of exceptions very cumbersome and difficult of convenient use.

Wherefore, affiant prays that an order be made that the original exhibits introduced upon the trial of this action be deemed a part of the bill of exceptions settled by the District Court and transmitted to the Circuit Court of Appeals upon the hearing of this appeal, and that a further order be made that said exhibits need not be included in the bill of exceptions other than to include therein those portions of letters which were read to the jury in the course of the trial.

ROLAND RICH WOOLLEY.

Subscribed and Sworn to before me this 31st day of March, 1942.

(Seal) ANN CUNNINGHAM

Notary Public in and for the County of Los Angeles, State of California.

My Commission Expires June 11, 1945.

EXHIBIT "A"

[Title of District Court and Cause.]

STIPULATION RE PREPARATION OF BILL OF EXCEPTIONS.

It Is Hereby Stipulated by and between the government, through Wm. Fleet Palmer, United States Attorney, and Ralph E. Lazarus and Norman W. Neukom, Assistant United States Attorneys, and the defendants and appellants, Edna W. Ballard and Donald Ballard, through their respective attorneys, Roland Rich Woolley, Ralph C. Curren, and Joseph F. Rank, that in the preparation of the bill of exceptions on appeal herein and in the preparation of the proposed bill of exceptions of appellants that only such portions of the letter exhibits need be incorporated in said bill of exceptions as were actually read into evidence by either counsel for the government or counsel for the defendants at the trial of the above entitled matter.

It Is Further Stipulated that as to all books, pamphlets, magazines, particularly the various issues of "The Voice" magazine, and as to any other documentary evidence introduced in evidence as exhibits by either party, other than the letter exhibits above referred to, that there need be in said bill of exceptions only reference made to the exhibit number and page wherefrom such reading took place, together with the designation as to which counsel at such time read therefrom.

It Is Further Stipulated that all exhibits in the above matter may be physically transmitted to the

Circuit Court of Appeals for consideration in connection with the appeal.

It Is Further Stipulated that the bill of exceptions will provide that all exhibits are deemed to be a part of the bill of exceptions.

Dated: March 25, 1942.

WM. FLEET PALMER
United States Attorney

RALPH E. LAZARUS
NORMAN W. NEUKOM
Assistant United States
Attorneys

By RALPH E. LAZARUS
Attorneys for Plaintiff

ROLAND RICH WOOLLEY
RALPH C. CURREN
JOSEPH F. RANK

By JOSEPH F. RANK
Attorneys for Defendants

The above stipulation is approved and it is so ordered.

J. F. T. O'CONNOR
United States District Judge.

[Title of Circuit Court of Appeals and Cause.]

STIPULATION RE TRANSMITTAL OF ORIGINAL EXHIBITS

It is hereby stipulated by and between the Government, through Wm. Fleet Palmer, United States Attorney, and Ralph E. Lazarus and Norman W. Neukom, Assistant United States Attorneys, and the appellants, Edna W. Ballard and Donald Ballard, through their respective attorneys, Roland Rich Woolley, Joseph F. Rank and Ralph C. Curren, that an order may be made by the Circuit Court of Appeals directing that the original exhibits in this matter be transmitted with and be deemed a part of the bill of exceptions on the appeal of the appellants herein, Edna W. Ballard and Donald Ballard.

Dated: March 31, 1942.

WM. FLEET PALMER
United States Attorney

RALPH E. LAZARUS
NORMAN W. NEUKOM
Assistant United States Attorneys

By RALPH E. LAZARUS
Attorneys for Appellee

ROLAND RICH WOOLLEY
JOSEPH F. RANK
RALPH C. CURREN

By ROLAND RICH WOOLLEY
Attorneys for Appellants

Received Copy of the Within Order for Transmittal of Exhibits, together with Affidavit of Roland Rich Woolley on Application for Order this 2nd day of April, 1942

WM. FLEET PALMER
United States Attorney

RALPH E. LAZARUS
NORMAN W. NEUKOM
Assistant United States Attorneys

By RALPH E. LAZARUS
Attorneys for Appellee

[Endorsed]: Filed Apr. 4, 1942. Paul P. O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

STATEMENT OF POINTS AND DESIGNATION OF PARTS OF THE RECORD NECESSARY FOR THE CONSIDERATION THEREOF.

Come now the appellants and designate the following points that they will rely upon on appeal:

(1) All points as set forth in the specification of errors filed in the District Court, reference to which is hereby made for full particulars.

Pursuant to the rules of practice of this court, the appellants do hereby designate the following parts of the record as those to be contained in the

record on appeal in the above entitled matter and upon which appellants rely:

(1) Those parts of the record designated and set forth in the praecipe for preparation of the printed record of transcript on appeal filed in the District Court, reference to which praecipe is hereby made for detailed particulars.

Dated: May 10th, 1942.

ROLAND RICH WOOLLEY
JOSEPH F. RANK
RALPH C. CURREN
By ROLAND RICH WOOLLEY
Attorneys for Appellants

Received copy of the within Statement of Points and Designation of Parts of the Record Necessary for the Consideration Thereof this 1st day of June, 1942.

WM. FLEET PALMER,
United States Attorney
RALPH E. LAZARUS
NORMAN W. NEUKOM
Asst. U. S. Attorneys
By NORMAN W. NEUKOM
Attorneys for Appellee

HKM

[Endorsed]: Filed June 3, 1942. Paul P. O'Brien, Clerk.

[fol. 1624] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

Excerpt from Proceedings of Friday, March 5, 1943

Before: Denman, Mathews, and Stephens, Circuit Judges

No. 10059

EDNA W. BALLARD ET AL., Appellants

vs.

UNITED STATES OF AMERICA, Appellee

Order of submission

Ordered appeals in above cause argued by Messrs. Roland Rich Woolley and Joseph F. Rank, counsel for appellants, and by Mr. Norman W. Neukom, Assistant United States Attorney, counsel for appellee, and submitted to the Court for consideration and decision, with leave to counsel for appellee to file additional authorities.

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

Excerpt from Proceedings of June 21, 1943

Before: Denman, Mathews, and Stephens, Circuit Judges

No. 10059

EDNA W. BALLARD, ET AL.

vs.

UNITED STATES OF AMERICA

Order directing filing of opinion and dissenting opinion, and filing and recording of judgment

By direction of the Court, ordered that the typewritten opinion and dissenting opinion this day rendered by this Court in above cause be forthwith filed by the clerk, and that a judgment be filed and recorded in the minutes of this court in accordance with the majority opinion rendered.

[fol. 1625] IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 10,059. Jun. 21, 1943

EDNA W. BALLARD AND DONALD BALLARD, Appellants

vs.

UNITED STATES OF AMERICA, Appellee

Appeal from the District Court of the United States for the Southern District of California, Central Division

Before: Denman, Mathews, and Stephens, Circuit Judges

MATHEWS, Circuit Judge:

Edna W. Ballard, Donald Ballard, Betty Mundy, Paul Stickell, Louise Majerus and William J. Cassiere were indicted in twelve counts. They demurred to the indictment and to each count thereof on the ground that no count thereof charged an offense. The demurrer was overruled. They pleaded not guilty and were tried. In the course of the trial count 1 was dismissed. Edna W. Ballard was convicted on counts 2, 3, 5, 7, 8, 11, and 12 and acquitted on counts 4, 6, 9, and 10. Donald Ballard was convicted on counts 8, 11, and 12 and acquitted on counts 2-7, 9, and 10. Mundy, Stickell, Majerus and Cassiere were acquitted on counts 2-12. Edna W. Ballard and Donald Ballard were sentenced and have appealed.

Appellants assign as error the overruling of the demurrer. Counts 1-11 of the indictment were based on §215 of the Criminal Code, 18 U. S. C. A. § 338, which provides: "Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, * * * shall, for the purpose of executing such scheme or artifice or attempting so to do, place, or cause to be placed, any letter, postal card, package, writing, circular, pamphlet, or advertisement, whether addressed to any person residing within or outside the United States, in any post office * * * of the United States, * * * to be sent or delivered by the post office establishment of the United States, * * * or shall knowingly cause to be delivered by mail according to the direction thereon, * * * any such letter, postal card, package, writing, circular,

pamphlet, or advertisement, shall be fined not more than $1,000, or imprisoned not more than five years, or both."

Counts 1-11 allege, in substance, that defendants[1] and Guy W. Ballard[2] devised a scheme to defraud and for obtaining money and property by means of false pretenses, [fol. 1626] representations and promises, and that the scheme was, in substance, that defendants and Guy W. Ballard would:

(a) Create, organize and operate a movement known as the "I Am" movement and, by means of the representations hereinafter set forth, solicit, induce, encourage, persuade and entice persons to become members and followers thereof.

(b) Form, organize, dominate and control a corporation known as the Saint Germain Foundation and arrange for the election of Donald Ballard as president, Paul Potter as vice president and Edna W. Ballard as secretary and treasurer thereof.

(c) By means of the representations hereinafter set forth, solicit, induce, encourage, persuade and entice persons to give money and property to the Saint Germain Foundation.

(d) Form, organize, dominate and control a corporation known as the Saint Germain Press and arrange for the election of Donald Ballard as president, Paul Potter as vice president and Edna W. Ballard as secretary and treasurer thereof.

(e) By means of the representations hereinafter set forth, solicit, induce, encourage, persuade and entice persons to purchase from defendants and Guy W. Ballard books, charts, pamphlets, magazines, and other matter published by the Saint Germain Press.

(f) By means of the representations hereinafter set forth, sell pictures, charts, paraphernalia and other articles.

(g) Arrange for, establish and maintain branch offices, meeting rooms and reading rooms in cities and towns throughout the United States, and arrange for and conduct

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[1] Appellants (Edna W. Ballard and Donald Ballard), Mundy, Stickell, Majerus, and Cassiere.

[2] Guy W. Ballard (husband of Edna W. Ballard and father of Donald Ballard) died before the indictment was returned.

meetings, classes and lectures at such offices and rooms for the instruction of persons in the principles, precepts and doctrines of the "I Am" movement.

(h) Arrange for and conduct radio programs and broadcasts over radio stations in the United States for the instruction of persons in the principles, precepts and doctrines of the "I Am" movement.

(i) In such meetings, lectures and broadcasts and by means of letters, books, pamphlets and other written and printed matter, make the following representations:

(1) That Guy W. Ballard had attained a supernatural state of self-immortality, which enabled him to conquer disease, death, old age, poverty and misery.

(2) That Guy W. Ballard had been selected and designated by Saint Germain[3] as a divine messenger through whom the words of Saint Germain would be transmitted to mankind.

(3) That the Ballards,[4] by reason of their high spiritual attainment and righteous conduct, had been selected as divine messengers through whom the words of "ascended masters"[5] including Saint Germain, would be communi- [fol. 1627] cated to mankind in the teachings of the "I Am" movement.

(4) That the Ballards had, by supernatural visitation, been accorded a supernatural state of self-immortality of body and had been appointed messengers of divine entities and "ascended masters," and that it was only through them that the teachings and principles of such divine entities and "ascended masters" would be transmitted to mankind.

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[3] Saint Germain (Germanus), Bishop of Auxerre, died in the year 448. International Encyclopædia, 2d Ed., Vol. 9, p. 670.

[4] Appellants and Guy W. Ballard.

[5] Appellants' brief states: "The Ascended Masters, in whom the 'I Am' Activity believes, are Divine Beings who exist in an intermediate sphere between God and man. The Ascended Masters are particularly devoted to the assistance of mankind in the attainment of high moral standards, harmony and eventual salvation. There are many Ascended Masters, Saint Germain being the most prominent in the 'I Am' Activity."

(5) That the teachings, precepts, doctrines and principles of the "I Am" movement were the only channels through which the spiritual teachings or words of Saint Germain and other "ascended masters" would be given to the world, and that said words and teachings were essential to the salvation of mankind.

(6) That the Ballards had attained a supernatural state of self-immortality, which enabled them to be entirely free from ailments common to man and to conquer disease, death, old age, poverty and misery, and that they could and would transmit that supernatural state to others willing to pay therefor.

(7) That the Ballards had, by reason of supernatural attainments, the power to heal persons of ailments, diseases and injuries and the power to cure persons of diseases normally classified as curable and of diseases normally classified as incurable, and had in fact cured hundreds of persons.

(8) That the Ballards had, by reason of divine origin, acquired a great healing power, and that followers of the "I Am" movement could acquire such power, achieve perfect bodies and heal themselves of all human ailments by giving implicit obedience to the precepts, principles, teachings and doctrines of said movement.

(9) That the Ballards had a divine and supernatural ability to bring forth from a supernatural state money, riches and other things necessary to mankind and could transmit that ability to others willing to pay therefor.

(10) That books published and sold by the Ballards [6] were the result of divine visitations and dictations to them by Saint Germain and other supernatural entities, that said books contained divine instructions for the salvation of mankind, and that the Ballards actually encountered the experiences related in said books.

(11) That magazines, booklets, circulars, letters, "edicts," "decrees" and musical compositions published, circulated and sold by the Ballards were divinely inspired and dictated by supernatural entities or "ascended masters" and were a part of the medium through which salvation could be obtained.

(12) That it was solely by reason of the Ballards' teachings and their embodiment in the "I Am" movement and

[6] Including "Unveiled Mysteries" and "The Magic Presence," both of which were written by Guy W. Ballard under the pen name of Godfre Ray King.

by reason of the Ballards' divine power and influence that the United States was saved from destruction; that, by divine inspiration, there had been accorded to the Ballards [fol. 1628] the ability to maintain the sovereignty and general welfare of the United States; and that, by reason thereof, complete obedience to their teachings, commands and decrees was absolutely necessary for the safety, welfare and sovereignty of the United States and for divine justice to be had in governmental and industrial activities.

(13) That a certain picture, reproductions of which were sold by the Ballards, was an actual picture of Saint Germain and was the result of a visitation by Saint Germain to Charles Sindelar, and that the purchase of reproductions of said picture by followers of the "I Am" movement was "desirable in their aim and hope to achieve salvation."

(14) That the purchase of certain charts, phonograph records and other articles from the Ballards by followers of the "I Am" movement would bestow upon the purchasers "great blessings and rewards in their aim to achieve salvation."

(15) That there would be, in one or more places in the United States, an actual visitation of "ascended masters" or divine entities, and that said divine entities would then and there appear in physical form before the assembled followers of the "I Am" movement.

(16) That a cataclysm or the end of the world was approaching, that there was therefore no necessity to provide for the future or to save money or other things of value, and that followers of the "I Am" movement, instead of saving their money, should give it to the Ballards.

(17) That any person who criticized or questioned the teachings of the Ballards would be denounced or punished by "ascended masters."

(18) That persons who followed the principles, doctrines and precepts of the "I Am" movement and the teachings of the Ballards would not die, but would "ascend" in their physical, tangible bodies, associate with divine entities and "ascended masters" and be able thereafter to return to earth at will, and to "reascend" if they so desired.

Counts 1-11 allege that all of the aforesaid representations were false, and that defendants and Guy W. Ballard knew they were false.

Count 1 alleges that, for the purpose of executing the scheme, defendants and Guy W. Ballard knowingly caused

to be delivered by mail according to the direction thereon a check in an envelope addressed to Mrs. G. W. Ballard, Los Angeles, California. Counts 2, 5, 6, and 8 are similar to count 1, except that count 2 relates to a check in an envelope addressed to Allied Advertising Agencies, Inc., Los Angeles, California; count 5 relates to a letter in an envelope addressed to Mr. Harry N. Rogers, Los Angeles, California; count 6 relates to a letter in an envelope addressed to Mrs. Portia Terry, Sierra Madre, California; and count 8 relates to a magazine in an envelope addressed to Miss Lucille C. Seifert, Los Angeles, California.

Count 3 alleges that, for the purpose of executing the scheme, defendants and Guy W. Ballard placed and caused to be placed in the United States post office at Los Angeles, California, to be sent and delivered by the post office establishment of the United States, a check in an envelope ad- [fol. 1629] dressed to Uptown State Bank, Chicago, Illinois. Counts 4, 7, 9, 10, and 11 are similar to count 3, except that count 4 relates to a letter in an envelope addressed to Mr. and Mrs. Arthur Bliss, Chicago, Illinois; count 7 relates to a letter in an envelope addressed to Mrs. Muriel Bliss, Chicago, Illinois; count 9 relates to a letter in an envelope addressed to Mr. G. W. Ballard, Washington, D. C.; count 10 relates to a letter in an envelope addressed to Mr. Harry N. Rogers, Los Angeles, California; and count 11 relates to a letter in an envelope addressed to Gladys Ethel Kemp, Glendale, California.

Count 12 was based on § 37 of the Criminal Code, 18 U. S. C. A. § 88, which provides: "If two or more persons conspire * * * to commit any offense against the United States, * * * and one or more of such parties do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be fined not more than $10,000, or imprisoned not more than two years, or both." Count 12 alleges that defendants and Guy W. Ballard conspired to commit the offenses charged in counts 1 - 11 and did certain acts [7] to effect the object of the conspiracy. We conclude that counts 1 - 11 charge offenses under § 215 of the Criminal Code; that count 12 charges an offense under § 37 of the Criminal Code and that, as to each and all of said counts, the demurrer was properly overruled.

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[7] Fourteen overt acts are alleged.

Appellants assign as error the admission of testimony concerning the cost per copy of publishing "Unveiled Mysteries" and the price per copy received by the Ballards for "Unveiled Mysteries" and "The Magic Presence;"[8] testimony concerning the gross and net amounts received from a class conducted by the Ballards at Philadelphia in 1934; a statement (exhibit 99) showing amounts received for books, charts and pictures sold by the Ballards between April 4, 1935, and September 1, 1935; a statement (exhibit 142) showing amounts received for books, charts, pictures, magazines and other articles sold by the Ballards and amounts received by them as "love gifts" between December 23, 1938, and December 31, 1938; a statement (exhibit 143) showing amounts received by the Ballards as "love gifts" between October 23, 1939, and December 4, 1939; testimony concerning amounts expended by the Ballards for radio advertising; and testimony concerning the number of radio stations over which "transcriptions" made by the Ballards were broadcast.

This evidence was objected to on the ground that it was immaterial. The objection was not well founded. To prove the offenses charged in counts 1 - 11, it was necessary to prove the scheme described in counts 1 - 11. A part of the scheme described in counts 1 - 11 was that defendants and Guy W. Ballard would obtain money in the manner and by the means described in counts 1-11. See paragraphs (a) to (i), supra. The testimony and exhibits mentioned above tended to prove that part of the scheme and hence were material.

[fol. 1630] Appellants assign as error the admission of photostatic copies (exhibit 203) of letters written by Guy W. Ballard to Edna W. Ballard in August, September, and October, 1930. The letters were put in evidence by appellants at a previous trial and (after copies had been made) were, by order of the court, returned to Edna W. Ballard. The copies were not objected to because they were copies, nor was their materiality questioned. Objections to their admission were that "the use thereof violated Articles 4, 5, and 6 of the Constitution;"[9] that "the letters were not

[8] See footnote 6.

[9] Meaning probably the Fourth, Fifth and Sixth Amendments.

voluntarily produced; but involuntarily, by reason of the necessity of rebutting the erroneous position that the Government took at the former trial;" [10] that the letters "had been produced at the former trial and were not in possession of the Government by reason of physical or moral compulsion"; and that such compulsion "amounted to a violation of the Constitution against unlawful search and seizure." [11] None of these objections was well founded. The letters were voluntarily produced and put in evidence by appellants. There was no compulsion, no search or seizure, no violation of the Constitution. Cf. Perlman v. United States, 247 U. S. 7, 13-15; Lisansky v. United States, 4 Cir. 31 F. (2d) 846, 850; Schauble v. United States, 8 Cir., 40 F. (2d) 363, 365.

Appellants assign as error the following statement by the court to the jury: [12] "Now, gentlemen, here is the issue in this case: First, the defendants in this case made certain representations of belief in a divinity and in a supernatural power. Some of the teachings of the defendants, representations, might seem extremely improbable to a great many people. For instance, the appearance of Jesus to dictate some of the works that we have had introduced in evidence, * * * or shaking hands with Jesus. [13] To some people that might seem highly improbable. I point that out as one of the many statements. Whether that is true or not is not the concern of this court and is not the concern of the

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[10] "Unveiled Mysteries" purports to have been written at Mount Shasta, California in August, September and October, 1930. The Government contended at the former trial that Guy W. Ballard, author of "Unveiled Mysteries," was not at Mount Shasta in either of those months. To show that he was there, appellants put in evidence the above mentioned letters.

[11] Meaning probably the Fourth Amendment.

[12] The statement was made before the Government had finished putting in its case. Why it was made the record does not show.

[13] There was evidence that the Ballards represented that certain works published and sold by them were dictated by Jesus. There was evidence that Edna W. Ballard represented that she and the other Ballards had shaken hands with Jesus.

jury * * *. As far as this court sees the issue, it is immaterial what these defendants preached or wrote or taught in their classes. They [the jury] are not going to be permitted to speculate on the actuality of the happening of those incidents. * * * The issue is: Did these defendants honestly and in good faith believe those things? If they did, they should be acquitted. * * * If these defendants did not believe those things, [if] they did not believe that Jesus came down and dictated, or that Saint Germain came [fol. 1631] down and dictated,[14] did not believe the things that they wrote, the things that they preached, but used the mail for the purpose of getting money, the jury should find them guilty."

That was not a correct statement of the issues. The issues were (1) whether defendants and Guy W. Ballard devised the scheme described in counts 1-11; (2) whether, for the purpose of executing the scheme, they used the mails in the manner described in counts 1-11; (3) whether they conspired to commit any of the offenses charged in counts 1-11; and (4) whether, to effect the object of the conspiracy, any party thereto committed any of the overt acts charged in count 12.

A part of the scheme described in counts 1-11 was that defendants and Guy W. Ballard would make false representations, namely, the allegedly false representations set forth in paragraphs (1) to (18), supra. Hence, to prove that defendants and Guy W. Ballard devised the scheme described in counts 1-11, it was necessary to prove that they schemed to make some, at least, of the representations set forth in paragraphs (1) to (18),[15] and that some, at least, of the representations which they schemed to make were false.

There was substantial evidence that defendants and Guy W. Ballard schemed to make some, if not all, of the

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[14] There was evidence that the Ballards represented that certain works published and sold by them were dictated by Saint Germain.

[15] It was not necessary to prove that they schemed to make all of the representations set forth in paragraphs (1) to (18). Lewis v. United States, 9 Cir., 38 F. 2d 406, 410; Levine v. United States, 9 Cir., 79 F. (2d) 364, 369.

representations set forth in paragraphs (1) to (18), and that some, if not all, of the representations which they schemed to make were false. Whether such representations were false or true was a question which should have been submitted to the jury. Instead of submitting it, the court, by its above quoted statement, excluded that question from the jury's consideration. This was error. The error was not cured by the charge subsequently given the jury. Instead, the above quoted statement was, in substance and effect, repeated in the charge.

Judgment reversed and case remanded with directions to grant appellant a new trial.

STEPHENS, Circuit Judge, dissenting:

The language of the trial judge in regard to the issue of the case as quoted in the majority opinion was not intended as an instruction upon the ultimate issues and could not have been so understood by the jurors. The instructions as a whole, it seems to me, compel this conclusion. I am not convinced that the judge's comments and instructions upon the decisive point of the majority opinion were not more favorable to the defendants than the law required.

[Endorsed:] Opinion and Dissenting Opinion. Filed Jun. 21, 1943. Paul P. O'Brien, Clerk.

[fol. 1632] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 10059

EDNA W. BALLARD et al., Appellants,

vs.

UNITED STATES OF AMERICA, Appellee

Decree

Upon Appeal from the District Court of the United States for the Southern District of California, Central Division

This cause came on to be heard on the Transcript of the Record from the District Court of the United States for the Southern District of California, Central Division and was duly submitted.

On consideration whereof, it is now here ordered and adjudged by this Court, that the judgments of the said District Court in this Cause be, and hereby are reversed and that this cause be, and hereby is remanded to the said District Court with directions to grant appellants a new trial.

[Endorsed:] Decree. Filed and entered June 21, 1943. Paul P. O'Brien, Clerk.

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

Excerpt from Proceedings of Wednesday, September 29, 1943

Before: Denman, Mathews, and Stephens, Circuit Judges

No. 10059

EDNA W. BALLARD et al.

vs.

UNITED STATES OF AMERICA

Order Denying Petition for Rehearing, etc.

Upon consideration of the petition of appellee, filed August 27, 1943, and within time allowed therefor by rule of court, for a rehearing of above cause, and of the appellants' answer thereto, filed September 4, 1943, and by direction of the Court, it is ordered, Stephens, Circuit Judge, dissenting, that said petition for rehearing be, and hereby is denied.

By direction of Denman, Circuit Judge, ordered his concurring opinion on denial of petition for rehearing be forthwith filed by the clerk.

[fol. 1633] IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 10,059. Sep. 29, 1943

EDNA W. BALLARD and DONALD BALLARD, Appellants

vs.

UNITED STATES OF AMERICA, Appellee

Before: Denman, Mathews, and Stephens, Circuit Judges

The petition for rehearing is denied.
William Denman, Clifton Mathews, United States Circuit Judges.

Stephens, Circuit Judge, dissents.

[Endorsed:] Order denying petition for rehearing. Filed Sept. 29, 1943. Paul P. O'Brien, Clerk.

DENMAN, Circuit Judge, concurring in the denial of the petition for rehearing:

Our opinion holds that the district court erred in excluding facts tending to show the truth of appellants' "representations" concerning certain transactions in which Jesus was present and participating.

The petition for rehearing contends that there is another issue before the jury, i. e., whether appellants honestly "believed" their representations that certain works published and sold were dictated by Jesus and whether Mrs. Ballard believed her representations that she and other Ballards had shaken hands with Jesus. The petition cites the district court's instruction

"The issue is: Did these defendants honestly and in good faith believe those things? If they did, they should be acquitted * * *."

It would be strong evidence in support of this issue of the mental condition of belief, that these transactions with Jesus actually occurred in their presence. The right to produce such evidence was denied appellants.

Before the close of the Government's case the district court made its ruling advising the jury that "whether that

[dictation by Jesus and shaking hands with Jesus] occurred is not the concern of the court and is not the concern of the jury * * *. They [the jury] are not going to be permitted to speculate on the actuality of the happenings of these incidents."

This was followed by the court's instructions in submitting the case to the jury.

"The defendants in this case made certain representations of beliefs in a divinity and in a supernatural power. Some of the teachings or representations of the defendants might seem extremely improbable to a great many people—for instance: the appearance of Jesus to dictate some of the works which have been introduced in evidence; the incident testified to by one of the defendants, Mrs. G. W. Ballard, that she shook hands with Jesus * * * these and [fol. 1634] other similar representations and statements might seem highly improbable to many people. Whether these incidents actually happened or not is for your consideration."

Here we have not only the exclusion of proof and the instruction to disregard facts which would strongly tend to support an honest belief that they happened, but the suggestion of their improbability. The error is as prejudicial to the issue of honest belief as to the issue of purposeful misrepresentations.

The petition's contention that the judgment of conviction should stand because there is other strong evidence of guilt has no merit. If on a new trial, the jury should be persuaded to believe that these miraculous events had occurred, they well may acquit these appellants. The district court did not give its reason for its ruling and instruction. If the reason be because such facts could occur in no possible chain of natural material causation, it is a denial to the religious of the right to prove one of the bases of their belief in the intervention of the supernatural in the daily lives of human beings—an obvious denial of the freedom of religion of the First Amendment of the Constitution.

[Endorsed:] Opinion of Denman concurring in denial of petition for rehearing. Filed September 29, 1943. Paul P. O'Brien, Clerk.

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 10059

EDNA W. BALLARD and DONALD BALLARD, Appellants,

vs.

UNITED STATES OF AMERICA, Appellee

Certificate of Clerk, U. S. Circuit Court of Appeals for the Ninth Circuit, to Record Certified Under Rule 38 of the Revised Rules of the Supreme Court of the United States

I, Paul P. O'Brien, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing one thousand, six hundred and thirty-eight pages numbered from and including 1 to and including 1638, to be a full, true and correct copy of the entire record, excluding original exhibits, of the above-entitled case in the said Circuit Court of Appeals for the Ninth Circuit, made pursuant to request of Hon. Charles Fahy, Solicitor General of the United States, counsel for appellee, and submitted under Rule 38 of the Revised Rules of the Supreme Court of the United States, as the originals thereof remain on file and appear of record in my office.

Attest my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 28th day of October 1943.

Paul P. O'Brien, Clerk.

[fol. 1635] Transcript of Record in Five Volumes

Volume V

In the Supreme Court of the United States, October Term, 1945

Edna W. Ballard and Donald Ballard, Petitioners,

vs.

United States of America, Respondent

Upon Petition for a Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit

[fol. 1636] United States Circuit Court of Appeals for the Ninth Circuit

No. 10059

Edna W. Ballard and Donald Ballard, Appellants,

vs.

United States of America, Appellee

Upon Appeal from the District Court of the United States for the Southern District of California, Central Division
Proceedings Had in the United States Circuit Court of Appeals for the Ninth Circuit

[fol. 1637] United States Circuit Court of Appeals for the Ninth Circuit

Excerpt from Proceedings of Friday, June 16, 1944

Before Denman, Mathews and Stephens, Circuit Judges

Order Directing Filing of Mandate of Supreme Court of the United States, and Vacating Judgment, and Resubmitting Cause

The mandate of the Supreme Court of the United States in above cause having been received, It Is Ordered that said mandate be forthwith filed by the clerk, and that the judgment of this Court filed and entered on June 21, 1943 be, and hereby is vacated and set aside.

It Is Further Ordered that this cause be, and hereby is resubmitted for consideration and decision, with leave to counsel for appellants to file a supplemental brief within 30 days from date, and with leave to counsel for appellee to reply thereto, if so advised within 30 days thereafter.

[fol. 1638] UNITED STATES OF AMERICA, ss:

The President of the United States of America (Seal),

To the Honorable the Judges of the United States Circuit Court of Appeals for the Ninth Circuit,

GREETING:

Whereas, lately in the United States Circuit Court of Appeals for the Ninth Circuit, in a cause between Edna W. Ballard and Donald Ballard, Appellants, and the United States of America, Appellee, No. 10059, wherein the judgment of the said Circuit Court of Appeals, entered in said cause on the 21st day of June, A. D. 1943, is in the following words, viz:

"This cause came on to be heard on the Transcript of the Record from the District Court of the United States for the Southern District of California, Central Division, and was duly submitted.

On consideration whereof, it is now here ordered and adjudged by this Court, that the judgments of the said District Court in this cause be, and hereby are reversed and that this cause be, and hereby is remanded to the said District Court with directions to grant appellants a new trial."

as by the inspection of the transcript of the record of the said United States Circuit Court of Appeals which was brought into the Supreme Court of the United States by virtue of a writ of certiorari agreeably to the act of Congress, in such case made and provided, fully and at large appears.

And Whereas, in the present term of October, in the year of our Lord one thousand nine hundred and forty-three, the said cause came on to be heard before the said Supreme Court, on the said transcript of record, and was argued by counsel:

On Consideration Whereof, it is now here ordered and adjudged by this Court that the judgment of the said United

States Circuit Court of Appeals in this cause be, and the same is hereby, reversed.

[fol. 1639] And It Is Further Ordered, That this cause be, and the same is hereby, remanded to the said Circuit Court of Appeals for further proceedings in conformity with the opinion of this Court.

(April 24, 1944.)

You, therefore, are hereby commanded that such further proceedings be had in said cause, in conformity with the opinion and judgment of this Court, as according to right and justice, and the laws of the United States, ought to be had, the said writ of certiorari notwithstanding.

Witness, the Honorable Harlan F. Stone, Chief Justice of the United States, the first day of June, in the year of our Lord one thousand nine hundred and forty-four.

Charles Elmore Cropley (Signed), Clerk of the Supreme Court of the United States.

[Endorsed:] Mandate of the Supreme Court of the United States. Filed June 16, 1944. Paul P. O'Brien, Clerk.

[fol. 1640] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

Excerpt from Proceedings of Friday, January 12, 1945

Before Denman, Mathews and Stephens, Circuit Judges

ORDER OF SUBMISSION

Ordered appeal herein argued by Messrs. Roland Rich Woolley and Joseph F. Rank, counsel for appellants, and by Miss Beatrice Rosenberg, Attorney, Department of Justice, counsel for appellee, and submitted to the court for consideration and decision.

[fol. 1641] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

Excerpt from Proceedings of Friday, June 29, 1945

Before Denman, Mathews and Stephens, Circuit Judges

ORDER DIRECTING FILING OF OPINION AND DISSENTING OPINION* AND FILING AND RECORDING OF JUDGMENT

By direction of the Court, Ordered that the typewritten opinion and dissenting opinion* this day rendered by this court in above cause be forthwith filed by the clerk, and that a judgment be filed and recorded in the minutes of this court in accordance with the majority opinion rendered.

* Dissenting opinion withdrawn by Denman, C. J.

[fol. 1642] IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 10059

EDNA W. BALLARD and DONALD BALLARD, Appellants,

vs.

UNITED STATES OF AMERICA, Appellee

Appeal from the District Court of the United States for the Southern District of California, Central Division

Before Denman, Mathews and Stephens, Circuit Judges

OPINION

STEPHENS, *Circuit Judge*:

In Ballard v. United States, 138 Fed. 2d 540 (CCA 9, 1943), we reversed the District Court's judgment in this case. In United States v. Ballard, 322 U. S. 78 (1944), the Supreme Court reversed our judgment and remanded the case for further proceedings in conformity with its opinion. We were thereby required to consider questions which we did not find it necessary to consider, and hence did not consider, when the case was here before. We have con-

sidered these questions and find no error warranting reversal of the District Court's judgment.

Affirmed.

(Endorsed:) Opinion Filed June 29, 1945. Paul P. O'Brien, Clerk.

[fol. 1643] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 10059

EDNA W. BALLARD and DONALD BALLARD, Appellants,

vs.

UNITED STATES OF AMERICA, Appellee

JUDGMENT

Upon appeal from the District Court of the United States for the Southern District of California, Central Division.

This cause came on to be heard on the Transcript of the Record from the District Court of the United States for the Southern District of California, Central Division, and was duly submitted.

On consideration whereof, it is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause be, and hereby is, affirmed.

(Endorsed:) Judgment. Filed and entered June 29, 1945. Paul P. O'Brien, Clerk.

[fol. 1644] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 10059

EDNA W. BALLARD and DONALD BALLARD, Appellants,

vs.

UNITED STATES OF AMERICA, Appellee

ORDER

My dissenting opinion filed on June 29, 1945, is hereby ordered withdrawn.

William Denman, United States Circuit Judge.

Endorsed:) Order. Filed December 13, 1945. Paul P. O'Brien, Clerk.

[fol. 1645] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

Excerpts from Proceedings of Wednesday, December 26, 1945

Before Denman, Mathews and Stephens, Circuit Judges

ORDER DIRECTING FILING OF OPINION AND DISSENTING OPINION ON PETITION FOR REHEARING AND DENYING PETITION

Ordered that the typewritten opinion and dissenting opinion this day rendered by this court on petition of appellants for a rehearing be forthwith filed by the clerk.

Pursuant to the majority opinion rendered and upon consideration of the petition of appellants, filed July 27, 1945, and within time allowed therefor by rule of court, for a rehearing of above cause, It Is Ordered—Denman, Circuit Judge, dissenting—that said petition for rehearing be, and hereby is denied.

[fol. 1646] IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 10,059

Dec. 26, 1945

EDNA W. BALLARD and DONALD BALLARD, Appellants,

vs.

UNITED STATES OF AMERICA, Appellee

Upon Denying Motion for Rehearing

Before: Denman, Mathews and Stephens, Circuit Judges.

STEPHENS, Circuit Judge:

Appellants were convicted and sentenced for the violation of 18 U. S. C. A. § 338, the statute which prohibits the use of the United States mails in fraudulent transactions. Upon appeal to this court the judgment of conviction was reversed, Judge Stephens dissenting, 138 Fed. 2d 540 (C. C. A. 9, 1943). In the course of the trial, the court ruled that inquiry into the truth of certain claimed happenings and powers of certain persons would encroach upon the field of religion and that the issue before the jury was not as to the truth of the claimed happenings or powers but was as to appellants' belief in them. A statement of this import was given the jury after conference in chambers between the presiding judge and counsel for all parties. This theory of the issue was adhered to consistently throughout the trial and in counsel's addresses to the jury and was incorporated in the judge's charge to the jury. Throughout the trial the record discloses no objection by either party to such treatment of the issue; rather it shows complete agreement therewith. Only later did counsel for defendants claim error in regard to it. The majority of this court reversed upon this point alone although there were other points in the appeal.

[fol. 1647] Upon certiorari from the United States Supreme Court this court was reversed by a divided court, United States v. Ballard, 322 U. S. 78 (1944). Mr. Justice Douglas wrote the prevailing opinion, which was concurred in by Mr. Justices Black, Reed, Murphy, and Rutledge.

In his opinion Mr. Justice Douglas held that counsel had agreed to try the case under the ruling above referred to and held that the court was right in not permitting the trial as to the truth of the claimed happenings or possession of claimed powers and would have been right even in the absence of an agreement to that end. He left unruled upon whether or not such construction of the issues effected an amendment to the indictment. The case was remanded to us to rule upon these and all other questions not treated in the prevailing opinion.

Mr. Chief Justice Stone dissented in an opinion concurred in by Mr. Justice Roberts and Mr. Justice Frankfurter. The Chief Justice thought there was no error in the trial and held for a reversal of this court and the affirmance of the conviction. Mr. Justice Jackson was for a flat reversal of the conviction and dismissal of the cause upon the ground that neither the truth of a religion nor the genuineness of a professed belief in a religion can be the subject of a court inquiry. Such is the posture of the case as it reached us for our second consideration.

Upon our second consideration we gave the record, briefs, oral argument, and especially the several expressions of the Justices, earnest study, and a majority came to the conclusion that the judgment of conviction should be affirmed. Also, in view of the fact that the members of the Supreme Court had given divergent expressions as to their views of the case, we chose to depart from the custom of writing an opinion, and so we confined ourselves to conclusions. Judge Denman was not in agreement with the majority and he wrote an opinion fully discussing the several issues of the case.

This court is now under the necessity of ruling upon a petition in which appellants urge that we grant a rehearing and after a rehearing that we express our views upon the several issues of the case. We yield to this plea in part, by expressing ourselves upon the issues, but because we see no need for further hearing and because, after further consideration, the majority adheres to its decision, we deny the petition for rehearing.

[fol. 1648] The Chief Justice, in voting to affirm the conviction, necessarily considered and passed upon every issue raised upon appeal. Insofar as the outcome is concerned, his opinion was in no wise in conflict with that of Mr. Justice Douglas. Mr. Justice Douglas not only found that

counsel for all parties had agreed to the trial court's expression on the religious phase of the case but held that the expression was legally correct. The Chief Justice passed the point with the following comment (page 90, his opinion, supra): "Obviously if the question whether the religious experiences in fact occurred could not constitutionally have been submitted to the jury, the court rightly withdrew it. If it could have been submitted, I know of no reason why the parties could not, with the advice of counsel, assent to its withdrawal from the jury."

No member of the Supreme Court has used language decisive of the case which conflicts with that of the Chief Justice, except Mr. Justice Jackson. In the latter's dissenting opinion it is held that there is no propriety in submitting the sincerity of a professed belief to a court for decision. Upon that phase of the case the Chief Justice says (page 89, his opinion, supra): "With the assent of the prosecution and the defense the trial judge withdrew from the consideration of the jury the question whether the alleged religious experiences had in fact occurred, but submitted to the jury the single issue whether petitioners honestly believed that they had occurred, with the instruction that if the jury did not so find, then it should return a verdict of guilty. On this issue the jury, on ample evidence that respondents were without belief in the statements which they had made to their victims, found a verdict of guilty. The state of one's mind is a fact as capable of fraudulent misrepresentation as is one's physical condition or the state of his bodily health." It is worthy of note that the Chief Justice suggested that there were points in the case distinct from any religious note and that the case could not be affected by any ruling relating exclusively to religion.

The Chief Jusice treated other issues raised upon appeal, among them the effect upon the indictment of the court's questioned instruction. He found no error and did not doubt the indictment's continued validity. It may sound presumptuous, for us as members of an intermediary court to say that we regard the Chief Justice's treatment of these questions as satisfactory and as errorless.

[fol. 1649] Two points upon appeal were not mentioned in any one of the opinions written by members of the Supreme Court, and each is regarded as decisive by our dissenting associate. He thinks the conduct of the district

attorney in his argument requires reversal. It is our opinion that if the conduct of the prosecution in argument in this case constitutes error, then the prosecution in every case is limited to a listless, vigorless summation of fact in Chesterfieldian politeness. Gone are the days of the great advocates whose logic glowed and flowed with the heat of forensics! Gone, except for counsel for the defense. Courts, jealous of the rights of the accused as well as with an eye to the appeal if the government wins, will seldom admonish defense counsel in his lachrymal appeal for a verdict of acquittal notwithstanding the evidence of guilt. Even yet will the district attorney be tried instead of the defendant and be found guilty by the defense attorney as having prostituted his superior mind to heartless persecution. Seldom will an innocent man unjustly become a convict through the heat and overstatement of a district attorney but the guilty will escape his just deserts if the district attorney is unduly restricted.

Counsel in opening argument told the jury: "The government claims in this case though, gentlemen, that this Ballard racket, as we might refer to it now in argument, is a flim flam scheme that has been unparalleled in history. These defendants have been the most successful fakers in the knowledge of the history of fakery, and I think that is a tribute to the principal organizer Edna W. Ballard." To this statement defense co-nsel objected but declined to elaborate upon his objection. The court told the jury that it was going to permit fullest argument, and that counsel may at times overstep themselves in the heat of argument, and that the jury should use its best judgment, having heard the evidence. Looking at the evidence from the prosecution standpoint, the expression objected to is mild.

The defendants claim at least to believe that they can do, and have done, and have experienced more extremely remarkable and unusual things than any other persons in history—things all the way from religious miracles to what generally have been referred to as charlatanry, black magic, love potions, et cetera. Justice Jackson, who would dismiss the case upon legal-philosophical reasons, does not restrain himself in expressing his view of the evidence when he says in the formality of an official opinion: "I [fol. 1650] should say the defendants have done just that for which they were indicted. • • • I can see in their

teachings nothing but humbug untainted by any trace of truth." Nothing said by government counsel bites as deeply as this statement.

In his closing address Mr. Neukom of government counsel says: "Let your verdict be a warning to those people who would be religious racketeers. Let's clean out the money-changers from the temple." Again he said: "We have toleration and feeling for all people, and I have it for them. It isn't pleasant to prosecute people, and don't think it is. Mr. Cannon (for defense) said the hard side is the defense. Gentlemen, if you have a heart in you, it isn't entirely so. It is hard to prosecute people, and that is true." Again: "We have just got human concepts, gentlemen. I don't want you to be intolerant of these people, but I want you to use your good sense." One counsel for the prosecution referred in argument to the precipitation of gold, jewels, et cetera. It is claimed that thereby he violated the instruction of the court in regard to religious matters, but it is not hard to see the difference between this claimed power and the claimed intimate association with Jesus and saints. If one claims to be able to precipitate gold, that is, just get it from where it is not, the gold would remain visible proof of the claim. But if one were to be put to his proof that he "walks with Jesus," the burden would be very different if not impossible to carry. Defendant-appellants in this case were relieved from such difficulty since the extent of the requirement was that they at least should believe in the truth of the remarkable things they taught, and got money for, and in connection with which they used the United States mails.

We discern nothing in counsel's argument on either side not fully within the concepts of honorable members of the American bar.

Our dissenting associate holds that it was reversible error for the trial court to proceed to trial with a jury selected from a jury list made up intentionally of males only. As heretofore stated, the point was raised and presented to the Supreme Court and was given no mention in any of the Justices' opinions. In the circumstances of this case we find no error.

The petition for rehearing is denied.

[fol. 1651] DENMAN, Circuit Judge, dissenting:

I dissent not only from the decision but also from the refusal of this court to respond to the requirement of the Supreme Court that we not only should "pass on" the important questions raised but not decided in that court, but, in addition, give that Court the "benefit of our views" upon them.

The language of this requirement is

> "Respondents maintain that the reversal of the judgment of conviction was justified on other distinct grounds. The Circuit Court of Appeals did not reach those questions. Respondents may, of course, urge them here in support of the judgment of the Circuit Court of Appeals * * * But since attention was centered on the issues which we have discussed, the remaining questions were not fully presented to this Court either in the briefs or oral argument. In view of these circumstances we deem it more appropriate to remand the cause to the Circuit Court of Appeals so that it may *pass on* the questions reserved. * * * If *any questions of importance survive* and are presented here, we will then have the *benefit of the views* of the Circuit Court of Appeals. Until that additional consideration is had, we cannot be sure that it will be necessary to pass on any of the other constitutional issues which respondents claim to have reserved." (Emphasis supplied.)
>
> United States v. Ballard, 322 U. S. 78, 88.

It is obvious from the decision of this court that three constitutional questions of importance, later considered, survive for the consideration of the Supreme Court.

I dissent from the language of this court desiccating the Supreme Court's requirement to the point where this court is to do no more than "rule upon" the questions remanded to us for our views.

The Supreme Court has held that because Mr. and Mrs. Ballard have the freedom of religion created by the First Amendment they are not free to prove that they have experienced and participated in certain divinely derived "happenings" to prove that they honestly and in good faith believed they had happened.

[fol. 1652] Since the Ballards are not free to make such obviously powerful and persuasive proof of their good faith, the record presents three questions of claimed violations of the constitutional rights of appellants, ably and cogently argued by their counsel. All three are concerned with the due process clause of the Fifth Amendment and two of them with the freedom of religion provision of the First Amendment.

(A) Though denied such freedom of proof of such happenings, the trial court not only permitted the jurors to ask whether such claimed divine happenings had actually occurred but itself asked a witness whether he had participated in one of them, and then stated that counsel would be permitted to argue to the jury the question of whether there had been such happenings. This was followed by calculated bitter repeated denunciations of the Ballards because they had not only failed to make proof of the miraculous occurrence in the past but also because they had not caused it to occur before the jury during the course of the trial.

This violation by the court of the dominant ruling of that court excluding such evidence was accompanied (a) by a questioning of Donald Ballard as to his participancy in another miraculous occurrence and critical comment on his answer, with (b) a sneering mockery of appellants' belief in the divine power of ascension of the body of a human being; (c) by a demand for a conviction because, the prosecuting attorney assured the jury, there had been a conviction in what to his knowledge had been a similar case decided 25 years before; (d) by a further demand for a conviction to keep up the morale of the troops fighting abroad in the world war, with (e) repeated mocking and degrading characterizations of the appellants.

This succession of violations of the rights of the defendants continued over two days and two noon recesses. The intervening deliberations in the recesses and overnight continuance led to no withdrawal by the prosecution of any of the previous abuses or false issues raised. Instead they continued through the closing argument. Here is no single unfair act, possibly excusable in the heat of argument as is suggested in the opinion of the court. Here are two days of deliberate and continued striking of the unfair blows of Berger v. United States, 295 U. S. 78, 88, and Viereck v. United States, 318 U. S. 236, 248.

[fol. 1653] I dissent from this court's ruling against this claimed error in the prosecution's process without stating any of the facts of such unfair conduct, set forth in appellants' briefs, or giving the court's views on any of the many cases in the Supreme and other federal courts sustaining appellants' contentions as to each specified abuse of that process.

I further dissent from the court's characterization of such accumulating abuse of the process of federal or any Anglo Saxon prosecution as being fully "within the concepts of *honorable* members of the American bar." Though understandable and perhaps in individual instances excusable, it is not commendable conduct within the concepts of the factory, the forecastle or Lord Chesterfield's drawing room.

In this respect, without minimizing the right of the Ballards to a reversal on this ground, one must consider on behalf of both the judge and the prosecutors the peculiar mental difficulty in separating the fact of miraculous experiences from a belief that they occurred. The trial court's ruling, with which a minority of four justices appear to disagree, is an extraordinary one of first instance. It is not surprising that that court, as also the prosecution, seemed to find it mentally impossible to make the distinction of which Justice Roberts in his dissent says,

> "In the first place, as a matter of either practice or philosophy I do not see how we can separate an issue as to what is believed from considerations as to what is believable • • • If we try religious sincerity severed from religious verity, we isolate the dispute from the very considerations which in common experience provide its most reliable answer."
>
> United States v. Ballard, supra, 92, 93.

(B) The second "important question" referred to us for our "views" is the abuse of the prosecuting process by the exclusion by the court's order of all women from the jury panel. Appellants' briefs cogently and forcefully present their argument and supporting authorities that here was absence of due process within the Supreme Court's decision in Glasser v. United States, 315 U. S. 60, 87.

This court not only does not give its views on the Glasser case but does not even mention it. Its opinion states "Our

[fol. 1654] dissenting associate holds that it was reversible error for the trial court to proceed to trial with a jury selected from a jury list made up intentionally of males only * * * In the circumstances of this case we find no error." I dissent not only from this refusal of the court to state its views for the benefit of the Supreme Court but from what, in effect, is a majority opinion cast in the form of a bald dissent from a reasoned dissenting opinion.

(C) A third question is whether it is not a denial of freedom of religion and of due process to indict defendants upon the charge of not "honestly and in good faith believing those things," i. e., such things miraculously experienced as the shaking of the hand of Jesus, where, because of the defendants' freedom of religion, they are not free to introduce the most persuasive proof of their honesty and good faith—that is, that they actually participated in the miraculous happenings.

This court nowhere considers this contention but confines itself to the view of a three-justice minority that the Ballards consented to be tried without evidence of such miraculous happenings and hence the indictment, construed as raising only the question of good faith in belief, is valid. I dissent from the failure of this court to give its views on this contention of the indictment's invalidity, assuming that by agreement of the parties it is to be construed as charging no more than stated in the opinion of the Chief Justice.

Entirely apart from the requirement of the Supreme Court for our views on these important questions in this extraordinary case, I dissent from the refusal of this court to give its views in a considered opinion upon such contentions cogently urged here in any appeal—*a fortiori* in a criminal appeal. Six of the seven states of this circuit have enacted laws requiring their appellate courts to render such opinions on the rulings they make.[1] The refusal to give our views in a reasoned opinion establishes a precedent, not

[1] California: Constitution, Article VI, §2, §4a; Idaho: 1-205, Idaho Code Annotated, 1932; Montana: §§ 8801, 8805, Revised Codes of Montana, 1935; Nevada: § 8381, Nevada Compiled Laws, 1929; Oregon: Constitution, Am. Art. VII, § 4; Washington: Constitution, Article IV, § 2. In Arizona, the seventh state, it is the practice of the supreme court to render such opinions.

only violative of our established practice but to the estab-
[fol. 1655] lished practice of all the states of the circuit and of the Supreme Court and other federal appellate courts.

In response to the Supreme Court's requirement there follows the expression of my views on the three constitutional questions which, under this court's decision, survive to the appellants for their assured consideration on a second writ of certiorari.

A. *The misconduct of the prosecution in attacking the defendants for not proving before the jury or elsewhere the miraculous occurrences they were forbidden by the court to prove, and in other respects, violates due prosecuting process as well as the accuseds' freedom of religion and constitutes reversible error.*

Under the holding of the Supreme Court that miraculous experiences could not be proved as facts to support appellants' belief in their miraculous powers, the statements of the prosecution appear so highly prejudicial that there should be a reversal and a new trial. The prejudicial statements concern the absence of the proof of two of the miraculous happenings. They constitute a denial of the appellants' freedom of religion as that Court interprets that portion of the First Amendment.

Of the eighteen facts constituting the misrepresentations of the indictment, the Supreme Court held "The false representations charged were eighteen in number. It is sufficient at this point to say that they covered respondents' alleged religious doctrines or beliefs."

One of these statements of "religious doctrines or beliefs" is in paragraph (9) of the portion of the indictment describing the conspiracy to use the mails to defraud, as follows:

> "(9) That the defendants, and each of them, further represented as a part of said scheme and artifice to defraud the persons intended to be defrauded; that the three designated persons, to-wit: Guy W. Ballard, Edna W. Ballard, and Donald Ballard, *had a divine and supernatural ability to bring forth from a supernatural state, money, riches, and other material needs necessary to mankind*, which power or condition and supernatural state the defendants represented that they could transmit to others willing to pay therefor or

willing to part with things of value therefor; whereas in truth and in fact *the above designated defendants* [fol. 1656] *well knew* that none, neither, nor all of them had any such supernatural power or ability of *precipitation* and all of said representations were false and fraudulent." (Emphasis supplied.)

The Supreme Court upholds the district court's ruling excluding from the jury evidence concerning "representations and statements [of miraculous experiences which] might seem highly improbable to many people" and that "Whether these [highly improbable] incidents *actually happened* or not is not for your consideration," and "They [the jury] are not going to be permitted to speculate on the actuality of these incidents." (322 U. S. 81.)

Despite this warning of the district court to the jurors, they were speculating on the "highly improbable" divine and supernatural ability of precipitation from "a supernatural state, money, riches, and other material needs." From the jury box one of them asked of one of the defendents, "I have one question. I just wanted to ask the witness if he ever precipitated anything." The witness' answer did not satisfy the juror and he repeated, "Answer my question. Did you precipitate anything?"

Whereupon the court abandoned its ruling excluding evidence upon which the jury could "speculate" "whether these incidents actually happened." Instead of declaring the question of the happening of the fact of such a "divine" miracle as irrelevant and its pursuit a denial of the accused's religious liberty; the court itself asked, "Did you yourself ever precipitate?"

The charged conspirator's answers are irrelevant to the issue of the area the questions showed to the jury to be open to their consideration. Colloquy ensued and the juror stated, "Isn't that something different from what we have been talking about as precipitation?" The court then ruled, "*That is going to be a matter for the attorneys on both sides to argue to the jury, and that* [the fact of precipitation] *will be a matter for you gentlemen to decide.*"

When it came to the argument, one of the prosecuting attorneys availed himself of this license of the court as to the area of discussion. Referring to one or more of the alleged conspirators, he made the following sneering remarks about the absence of any proof of such divine and

supernatural happenings as the precipitation of precious metals:

> [fol. 1657] "Betty Mundy has no doubt, Louise Majefus has no doubt, Donald Ballard is one of the accredited messengers of the ascended masters, and he certainly has no doubt, and Mrs. Ballard, as the bigwig, the chief of the entire organization, certainly could have no doubt whatsoever—to say nothing of William Cassiere and Paul Stickell, those traveling salesmen for the Ballards, they certainly would have no doubt—yet gentlemen, *have they managed to precipitate gold or jewels?* If they have, I submit that *we should have been told about it here in court. Possibly we should have had an example of such precipitation shown us.*"
>
> " . . . He himself *had not been able to precipitate,* apparently because he was not sufficiently pure. That same dog chasing the same tail. And yet Paul Stickell was sufficiently pure to be appointed a messenger of Saint Germain."
>
> " . . . and I submit, gentlemen, that if it is such that the Ballards, as the accredited messengers of the ascended masters, those mighty people who have never made any mistakes, those perfect beings *should have been able to precipitate* and *should have been able to precipitate some of their needs* instead of taking money from poor people who had given much more than frequently they could afford to this movement through love gifts and through the purchase of books." (Emphasis supplied.)

Again, disregarding the court's ruling regarding the truth of such a miraculous happening, the prosecution built an argument upon Donald Ballard's denial that he in fact had ever ascended. Also, to meet the statement of Mr. Ballard, Sr., as to their communion with the ascended master, St. Germain, that "Mrs. Ballard and Donald and I have stood in the visible, tangible, presence of our blessed ascended master Saint Germain many, many times," the prosecution stated to the jury, "Now, DID *Donald Ballard have these experiences* or didn't he? One of the reasons *we know he didn't have these experiences* was that he wasn't the practiced and experienced actor that Mrs. Edna W. Ballard was." (Emphasis supplied.)

Again, against the excluded issue of the actuality of the happenings, the prosecution in its opening argument [fol. 1658] claimed the evidence failed to show that Mrs. Ballard "actually did associate with the gods" in the following argument: "Now, of course, if Mrs. Ballard actually did associate with the gods, you can well understand how these various people that joined the movement would join the movement and would stay in the movement; but *I don't think she did,* and *I don't think the evidence shows that she did.*" (Emphasis supplied.)

In the closing argument this was reiterated in the statement, "People were told that if they would follow these teachings they would ascend, and they knew they couldn't. And that is a bad faith. *There isn't anyone that has ascended that you know of here.*" (Emphasis supplied.)

As to the supernatural power of healing the sick, charged in the indictment as construed by the Supreme Court as no more than something claimed but not believed, the prosecution again taunts the Ballards with failing to prove the *fact* of such divine healing by "producing witnesses who had actually been cured" and who "were grateful to the Ballards for curing these incurable diseases."

As a climax to such violation of the denial of the proof of the miraculous happenings, the prosecutor offered in argument *his own testimony* that one such alleged happening had not occurred, stating "Now, what a cosmic light is, I don't know, but it sounds like a cataclysm to me. And *I know I was here in Los Angeles on July 1, 1938, and July 17, 1938,* and cataclysm or not, *I know that there wasn't any great wave of cosmic light striking at the Shrine Auditorium or any other place here at that time.*" (Emphasis supplied.)

Later, in the closing argument, the prosecutor again offered *his evidence* of the conviction of persons similarly charged and suggests a like conviction, stating "About 25 years ago in California there was a group of people—I think two—prosecuted for mail fraud. They claimed to be the sons of God, that they had the power of Moses and Elijah, that the mantle of Jesus had fallen on them, that they had the keys to the kingdom of heaven. *They were prosecuted and they were convicted,* gentlemen. There are others. This is nothing unusual. And *this is going to be one more on that list, I believe.*" (Emphasis supplied.)

[fol. 1659] As to the claimed supernatural power to ascend, a part of defendants' claimed religious belief, the prosecution mockingly describes it as "Ascension was an exciting painless and adventurous sort of thing. You wouldn't have to pass through death, at least at first, until Mr. Ballard became quite ill and it was evident that he was going to die; you just sort of rise up in the air and would be able to come back and forth as you desired, become invisible or visible, as you wished. *Superman* does that frequently and it is a very interesting and exciting sort of thing . . ."

And this under the instruction of the court that "the religious beliefs of these defendants cannot be an issue in this court."

To complete the succession of violations of due process by the prosecution, one of the prosecutors finished his argument by proposing a conviction because we were then at war. "You gentlemen are trying this case—this important case I might add—in very unusual times. *The country is at war.* And a case of this sort makes it devolve upon you here to see that the defendants are convicted if you find that they are guilty of fraud *so that those who are fighting for our country will find that they have something to come back to worth fighting for.*" (Emphasis supplied.)

Having thus discussed the actuality or nonactuality of these events in the area so licensed by the court, though the discussion of such happenings as facts is held by it and the Supreme Court as an invasion of the religious freedom of the accused, the prosecuting attorney repeatedly followed that discussion with such intemperate and highly prejudicial denunciations of Mrs. Ballard as "glib" and an "adept prevaricator;" as "the most successful faker in the history of fakery," "a cheat," "a charlatan" and "a religious racketeer."[2]

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[2] In the following cases were reversals for such language: Volkmor v. United States, 13 F. 2nd 595; defendant called a "skunk," a "cheap scaly slimy crook." Rouse v. Burnham, 51 F. 2d 709, 713; physician called a "crooked doctor," defendant "had all the earmarks of a common ordinary liar," parties were "rascals and scoundrels." London Guaranty Co. v. Woelfle, 83 F. 2d 320, 336; doctors "stood there like a bunch of sharks."

If the proof of the facts of a divine precipitation or ascension had been permissible, such denunciations possibly would be within the prosecutor's extension of his privilege as established in United States v. Socony-Vacu-[fol. 1660] um Oil Co., 310 U. S. 150. Here they are poisonous additions to an argument, based in large part upon statements which, under the holding of the Supreme Court, are so violative of the accuseds' right of religious liberty.

At the beginning of the argument to the jury the district court, in overruling appellants' first objection to the character of the prosecution's argument, concluded by stating "In the heat of argument on both sides counsel will probably make remarks that do not fully conform to the evidence. Lawyers will do that, and even individuals will do that in the heat of argument. I just give you that general caution, and I think with the good sense and intelligence of the jury, if you find that extreme or extraordinary statements have been made, that you will disregard those statements and only pass judgment upon the evidence *as interpreted by counsel.*"

What was evidence so to be "interpreted" obviously included the facts of ascension and of precipitation, upon which the court itself and one of the jurors had interrogated one of the witnesses. Since the jury was thus at the beginning of the argument advised that it was to "pass judgment upon the *evidence as interpreted by counsel,*" here was announced license to comment upon the evidence of such divide supernatural *facts* as the ascension of the body and precipitation.

Clearly, this is a case where the truth as to religious experiences entered the area of passion and prejudice which the Supreme Court's decision sought to avoid. It is such a case as Viereck v. United States, 318 U. S. 236, 248, where the Supreme Court held of such "passion and prejudice" that counsel's discourse on it should have been stopped by the court "without waiting for an objection."[3]

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[3] "At a time when *passion and prejudice* are heightened by emotions stirred by our participation in a great war, we do not doubt that these remarks addressed to the jury were highly prejudicial, and that they were offensive to the dignity and good order with which all proceedings in court should be conducted. We think that the trial judge

[fol. 1661] To the suggestion that the instant case is so strong against the Ballards that the Viereck case does not apply, the answer is that to any of the jurors having a religious belief in miracles it well would appear a weak one. The effect of the devastating attack of the prosecution is not to be measured by non-belief in the miracles of the Bible or the mormon Joseph Smith.

It is my view of such misconduct that it requires the reversal of the judgments convicting the Ballards.

(B) *It is a violation of the due process clause of the Fifth Amendment and impartial jury clause of the Sixth Amendment for the clerk of the court and the jury commissioner, on the order of the court, to exclude from the jury lists one-half of all the persons—that is all the women—eligible for the trial of a mother and son on the charge of misrepresenting their religious beliefs and experiences miraculous in character.*

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should have *stopped counsel's discourse without waiting for an objection.* 'The United States Attorney is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer. He may prosecute with earnestness and vigor—indeed, he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one.' Berger v. United States, 295 U. S. 78, 88. Compare New York Central R. Co. v. Johnson, 279 U. S. 310, 316-18." (Emphasis supplied.)

That the court *sua sponte* should have stopped such argument is held in the following cases: Pierce v. United States, 86 F. 2d 949, 952; Volkmor v. United States, 13 F. 2d 594, 595; Rouse v. Burnham, 51 F. 2d 709, 713; London Guaranty Co. v. Woelfle, 83 F. 2d 325, 344; Aetna Life Ins. Co. v. Kelly, 70 F. 2d 589, 594.

It is admitted that all women were excluded from the grand and petit jury lists from which the grand jury indicting and the jury trying the Ballards were selected. It was stipulated that the discrimination was intentional—that is with the approval of the court of the Southern District of California. Cf. Snowden v. Hughes, 321 U. S. 1, 8.

The Ballards contend that due process in the trial of an indictment of a woman and her son for conspiring together to misrepresent as to their religious beliefs requires the district court's clerk and jury commissioner not so to dis-[fol. 1662] criminate against all women in making up the jury lists.[4] It is a matter of indifference whether this

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[4] The Ballards' motion to quash the indictment on the ground of this discrimination was denied. At the opening of the trial the entire jury panel was challenged on the same ground. The challenge was overruled and an exception taken. At the close of trial a motion for a dismissal on both grounds was made and denied. Exceptions were taken. The denials of the district court of the motion to quash and the motion to dismiss were here assigned as error.

The opening brief on appeal here reserved the constitutional questions involved by assigning the above claimed errors as relied upon, but at the first hearing here they were not pressed. On the second hearing they were fully briefed by the Ballards and the prosecution. The prosecution now seeks to prevent our consideration of the constitutional questions involved on the ground that, though reserved as assigned error in the first brief, their detailed consideration was not given until the filing of the supplemental brief.

The Supreme Court does not so treat defenses in criminal cases based upon one of the Bill of Rights amendments, even where they were not, as here, presented to the trial court and reserved to the appellate court by assignment of error. Weems v. United States, 217 U. S. 349, 362. If there be error here, ". . . it was plain error of such a fundamental nature that we should notice it." Sibbach v. Wilson, 312 U. S. 1, 16. Our own rule is that even where there is no motion for a directed verdict we will consider an error reserved here by assignment "far enough to see there has been no miscarriage of justice." Giles v. United

claim is based upon the Fifth or Sixth Amendments. It is obvious that they have been denied due process in the jury-constituting portion of the prosecuting process if the lists are not valid under the requirements of the Sixth Amendment.

That Amendment requires that the jury shall be a "body truly representative of the community;" that it is "not [fol. 1663] the organ of any special group or class" and made up without "tendencies *no matter how slight*, toward the selection of jurors by any method other than a *process* which will insure a trial by a representative group." Emphasis supplied.) Otherwise the selection of the jury will be one of the "undermining *processes* weakening to the institution of jury trial" which "should be sturdily resisted." Glasser v. United States, 315 U. S. 60, 87.

This statement of the law was made in considering whether the Sixth Amendment was violated by the omission of all women from the grand jury and nearly all women from the trial jury lists. It is inconceivable that the Supreme Court was speaking *in vacuo*.[5] To me the

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States, 144 F. 2d 860, 861 (CCA-9); Mareo v. United States, 26 F. 2d 315, 316 (CCA-9).

The government also seeks to prevent the consideration of the constitutional questions, claiming that an order denying a motion to quash an indictment on account of discrimination in the membership of the grand jury is not an appealable order. It relies upon two cases in this court, Conway v. United States, 142 F. 2d 202, and Tudor v. United States, 142 F. 2d 206. In both these cases the ground of the motions to quash was a defect on the face of the indictment and hence subject to demurrer. If they are construable as applying to a motion to quash on the ground here urged, they are overruled by Glasser v. United States, 315 U. S. 60, 64, where the Supreme Court considered the claim of error in the composition of the grand jury on appeal from a denial of the motion to quash the indictment.

[5] Similarly this court in the recent case of Thiel v. Southern Pacific Co., 149 F. 2d 783, 786, disposed of the claimed unconstitutionality of a federal jury because there was purposefully a larger number of women than men on the jury—not on the ground that this was a matter of indifference, but on the facts.

Glasser statement makes clear that *today* the "impartial jury" of the Sixth Amendment has as one of its determinants the character of the grand and trial jury lists as "truly representative of the community" with respect to the exclusion therefrom of qualified women.

Like all such progressive concepts of the area and content of the Bill of Rights, it is quite likely the founding fathers would not have recognized the validity of this statement of the law.

It is also a fact that in California women have participated in the governmental function of indictment by grand juries and trial by petit juries for twenty-eight years. Cf. In re Mana, 178 Cal. 213.

The realization of the contribution of women to the public affairs of the state and nation was a gradual growth. The recognition of the accompanying constitutional rights is also a "gradual process." As stated by Chief Justice Hughes of the attempt to fix such rights as those of "due process" by mathematical formulae, such formulae "are not provided by the great concepts of the constitution such as 'interstate commerce,' 'due process' and 'equal protection.' In maintaining the balance of constitutional grants and limitations, it is inevitable that we should define their application in the *gradual process of inclusion or exclusion.*" Santa Cruz Co. v. Labor Board, 303 U. S. 453, 467. (Emphasis supplied.)

[fol. 1664] One does not need to read Muller v. Oregon, 208 U. S. 412, or the many regulations in the statutes of the states of this circuit for maximum hours and establishing a minimum wage for women to realize the basic differences in social function between men and women in our social life. What is here pertinent is that women bear children. In the average family from which jurors are drawn, the souls of children in their infant and early adolescent bodies receive the first and most lasting teaching of religious truths from their mothers. In the same families the major social function of men is concerned with the creation of material things, largely food and clothing and housing of the children's bodies.

In the public schools over ninety-five per cent of the primary and grammar school teachers are women. In the churches of all religions the numbers of women attendants on divine service vastly exceed men. The one large and vital religious group created in America since Joseph Smith is

that of the Christian Scientists founded by a woman, Mary Baker Eddy.

The excluded statements[6] of Mrs. Ballard to the Postal Inspectors as to her religious experiences, quite likely could [fol. 1665] be regarded by woman jurors to be as much from the inspired influence of Jesus on a sincere and devoutly sainted person as many of the followers of Mary Baker Eddy regarded hers. It matters not that from my viewpoint there is other testimony of a conspiracy so mean and vile that it warrants some of the strongest strictures of the prosecution. I am not a woman juror sitting in the Ballard trial, who is the mother of five children at whose

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[6] "Mr. Callahan [Postal Inspector]: Just what do you mean by that?

Mrs. Ballard: The dictation of the instruction contained in the books, which is the subject matter of the law that we teach; the same as a teacher would dictate a problem in arithmetic for the class to copy and go home and work out. The ascended master Saint Germain dictated these to Mr. Ballard in my presence in Chicago. Saint Germain came in a tangible body. You can't say a physical body because it is not, because it doesn't vibrate with the same density or radiation of our physical flesh, but it is a solid tangible body. You can shake hands with it. The ascended master lives in a visible, tangible body of substance that you can shake hands with, but it is far finer and more perfect than our own. It looks like a physical body to your physical eyes. Saint Germain is one of the ascended masters, the same as Jesus. There are other beings in this universe besides the human beings. Man must admit there is something bigger in this universe, something that is greater than mankind, and there are beings in this universe with more intelligence than man and far more perfect than man. We are surrounded by a universe greater than ourselves. It has law and order within it, and there are beings greater than man who direct its greater manifestations. You must admit that mankind, with all their mistakes and discord and ignorance, are surely not all the beings there are in the universe.

Mr. Callahan: Now, Saint Germain gave these dictations and then you and Mr. Ballard just copied them down, I mean, just as a stenographer would do?

knee have been instilled in them the teachings of Jesus as interpreted by Mrs. Eddy.

Well could a sensitive woman, highly spiritual in character, rationalize all the money income acquired by Mrs. Ballard as being devoted to the teachings of the same Jesus as are the profits of the trust created by Mrs. Eddy for the Christian Science Monitor. From what the violently prejudiced and often bigoted critics of Mrs. Eddy have said in the historic attack upon her and the sect she founded, she as well as Mrs. Ballard could have been indicted under the mail fraud statute and been denied the right to testify as to her religious experiences.

The government argues that certain California cases have held that it is not reversible error in California to exclude all women from the grand and petit jury lists. These cases [fol. 1666] are well summarized in the opinion of Judge Yankwich in Ballard v. United States, 35 F. Supp. 105, 107, where another indictment of the Ballards by a preceding

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Mrs. Ballard: Just as Mr. Dechter [a stenographer] is taking them here. I sat at the table with a pencil and paper and took them down and other ascended beings besides Saint Germain dictated. Jesus himself has been present and dictated several. We have shaken hands with Him. He has held us in His arms. He is real, and I say that before every human being on this earth and all the divine beings of this universe, only because it is true and for no other reason. I bear witness to the reality of these great divine beings, the ascended masters of love, light, and wisdom, who are wholly perfect and have given this instruction to help mankind to become perfect also. I tell you the truth, the whole truth, and nothing but the truth, and because human beings do not know this law or have not understood how to come into the presence of the ascended masters, does not take them out of the universe nor make this law an untruth, nor we, falsifiers. They instructed us to get this instruction in printed form where humanity could have it for their own perusal so each one could apply the law explained and prove the truth of this law for each individual. We have never asked anybody to believe us. We have said 'Here is the law, apply it, and you yourself will be your own proof of its truth and its practical application to help mankind harmonize, this misery and suffering under which they are now suffering.' "

grand jury was unsuccessfully sought to be quashed on the ground of the absence of women from the grand jury list. That case is not *res judicata*, since there was no decision against the Ballards from which they could appeal.

Judge Yankwich's opinion was written before the decision in the Glasser case, supra. It fails to consider the statements of the California supreme court in the last of these cases, People v. Purman, 14 Cal. 2d 17, 20, where, after stating that in California the requirement that qualified women should be placed on jury lists is directory and not mandatory, it is said "Failure of substantial compliance [with the requirement] was not shown *nor does any prejudice to the rights of appellant appear.*" (Emphasis supplied.) The absence of prejudice there is apparent from the facts that appellant was a man tried by a jury of men on a charge of murder.[7] What is important in this latest decision of that supreme court is that that court considers that the exclusion of women from the jury lists may be prejudicial. If that be true in any case, it well may be true of the trial of the Ballards.

However, had the California courts held that no one could possibly be prejudiced by the intentional exclusion of women from the jury, it would in no way be binding on the federal district court. The dictum to the contrary of the district court in the earlier Ballard case is not supported by the statute upon which it relies. The jury provisions of the

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[7] The other California cases show an equal lack of prejudice. People v. Shannon, 203 Cal. 139, man convicted of murder by a jury of men; People v. Manuel, 41 Cal. App. 153, woman convicted of forgery by a jury of women, "in the absence of such showing" "that her substantial rights were in the slightest degree prejudiced." Cf. United States v. Pelly, 132 F. 2d 170, 180 (CCA-7), (decided since but ignoring Glasser v. United States), men convicted of violation of federal sedition law by jury of men where "no prejudice to defendants' cause was shown . . . as might readily exist where all persons of defendants' . . . creed were intentionally excluded." Wuichet v. United States, 8 F. 2d 561, 562, man convicted of stock selling fraud by jury of men and no showing "of prejudice to his rights."

[fol. 1667] controlling feedral statutes [8] are solely concerned with the states' "qualifications" for jurors, here California. They nowhere require or justify the purposeful *exclusion* of half the persons so "qualified" from the jury lists because a state court so holds.

It is significant, however that in § 412 Congress recognizes a prejudice other than of race as making a jury partial. That section requires that the clerk shall be of a different politicial party from the jury commissioner. Could it be said that a prominent party politician indicted for a violation of the election laws had an impartial jury within the Sixth Amendment if the clerk and commissioner, though of opposite party affiliations, purposefully connived to ex-

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[8] (28 U. S. C. A.) "Section 411. (Judicial Code, section 275.) Jurors: Qualifications and Exemptions. Jurors to serve in the courts of the United States, in each State respectively, shall have the same qualifications, subject to the provisions hereinafter contained, and be entitled to the same exemptions, as jurors of the highest court of law in such State may have and be entitled to at the time when such jurors for service in the courts of the United States are summoned."

"§ 412. (Judicial Code, section 276, amended.) Same, Manner of Drawing. All such jurors, grand and petit, including those summoned during the session of the court, shall be publicly drawn from a box containing, at the time of each drawing, the names of not less than three hundred persons, possessing the qualifications prescribed in the section last preceding, which names shall have been placed therein by the clerk of such court, or a duly qualified deputy clerk, and a commissioner, to be appointed by the judge thereof, or by the judge senior in commission in districts having more than one judge, which commissioner shall be a citizen of good standing, residing in the district in which such court is held, and a well-known member of the principal political party in the district in which the court is held opposing that to which the clerk, or a duly qualified deputy clerk then acting, may belong, the clerk, or a duly qualified deputy clerk, and said commissioner each to place one name in said box alternately, without reference to party affiliations until the whole number required shall be placed therein."

clude from the jury lists all members of the party of the accused man? Would such an exclusion of working men, say of the I. W. W., and the listing of jurors solely of business men, give an impartial jury for the trial of a working man on a charge of attempting to wreck a passenger train during a strike against the railway? Cf. Walker v. United States, 93 F. 2d 383, 391; Mamaux v. United States, 264 Fed. 816, 819.

In response to the inquiry of the Supreme Court for our views on the defense of exclusion of women from the grand and petit juries in the indictments and trials of a woman and her son, with evidence showing him to be under her [fol. 1668] influence, charged with misrepresentation regarding their religious beliefs, it is my view that the defense is valid and that the judgment of conviction should be reversed. Though not necessary in a case of such likely prejudices, I am also in accord with what is stated and held at pages 861 and 862 of Roenig v. United States, 52 F. Supp. 857, the only federal case cited discussing and relying on Glasser v. United States.

(C) 1. *Since, because men are religiously free they are not free to prove as facts their religious experiences, it is a denial of their religious freedom and of due defensive process to charge them with a crime, of which the essence is a misrepresentation of their belief in the facts of such experiences.*

2. *Congress did not intend the mail fraud statute, in effect, to license the clever swindler, who may represent to the trusting his participation in supernatural happenings, and nevertheless keep his loot, by refraining from stating his want of belief that they had occurred.*

The Ballards demurred to each count of the indictment on the ground that "said indictment does not state an offense in that on the face of said indictment, and each and every count thereof, it appears that the facts upon which the conviction will be sought are truly statements of opinion or of religious belief, and which are not subject to disproof under the Constitution of the United States and of the law of the land."

The validity of that demurrer must be determined in the light of the holding of the Supreme Court that, if one be charged with using the mails to defraud by false representa-

tions of one's religious experiences, he may not in his defense prove the experiences to have occurred.

It is my view that the First Amendment, so denying a man the most potent proof of his innocence, is violated by the indictment in this case. An interpretation holding the indictment valid would convert the First Amendment into a torturing instrument, cruelly hamstringing an innocent accused in his attempt to escape from the legal meshes woven by a religiously antagonistic grand jury.

It is also my view that Congress did not intend to create an offense in which not only is the innocent accused so mangled in his defense, but also the government is denied [fol. 1669] the right to prove the represented happenings were venal and cruelly deceiving-falsehoods.

In the judicial construction of statutes, here those for the fraudulent use of the mails, Congress is presumed charged with knowledge of our constitutional law on the dates of the statutes' enactments, though later expressed by the Supreme Court. To reach the view that Congress has not created the offense described in the indictment there are here considered the then prospective analogous cases and the make-up of federal juries, necessarily in the view of Congress in enacting the legislation.

1. *The indictment under the Supreme Court's decision, hamstrings the innocent.*

On every American jury there may be expected jurors of the Fundamentalist Protestants, High Episcopalians and Catholics who, with complete devotion and reverence, profoundly believe in such miracles; all of them of the Resurrection of Jesus after death and his physical living presence in fact in space, to be physically touched and physically heard; many of them of the physical presence of the miraculously placed stigmata on the body of St. Francis, for whom the writer's native city was named, stigmata physically there by an extra-material causation but measurable by calipers as to depth and size; and of the miracles of Lourdes and of innumerable other saints.[9] To many of

[9] Holweck's Biographical Dictionary of the Saints lists approximately 25,000 who have been recognized as saints in various faiths. The Catholic Encyclopedia (1913 ed.) states in Volume II in the article Beatification and Canonization that miraculous experiences of the person sought to be canonized are among the essential prerequisites.

them the wine that flowed from the water jars from which Jesus served the wedding feasters at Cana was as from the vine and potable and actually consumed by both believers and unbelievers.

To such religious these happenings are no mere projections of emotional excitation. They are not the "fanciful conjectures" of Borden's Co. v. Boldwin, 293 U. S. 194, 209. They happen in fact in space and time. To the many millions of such believers, it would impugn the integrity of their clergymen and priests, who preach the truth of such happenings, to hold that they have not frequently occurred in recent and past religious history or that they are unlikely to occur tomorrow. Such religious have no sympathy with [fol. 1670] a cleric's ironic remark that "It takes a miracle to prove a miracle." To them they are provable as any fact is proved.

The writer prays that his respect for his neighbors' and friends' belief in the appearance of such spiritual supernatural beings is as profound as is theirs. If the writer were not so minded, the First Amendment would compel at least a formal respect, even now that such religious, to escape the penitentiary, are denied the right to prove, in a court of law, the truth of such experiences.

Others almost certain to be on the jury are the religionists who also believe that man is an individual spirit with complete moral freedom, though abiding in a world of unbroken physical causation. Though questioning any miraculous break in the material causal chain, they also believe that the moral power of self-denial, the purpose of service to other spirits and to causes social and political in the alleviation of suffering and in the creation of freedom from want and of aesthetic beauty, are not mere evolutional rearrangements of primordial gases.

Also on the jury well may be the agnostic and the pure materialists who believe that even this inadequately composed opinion, including its punctuation and capitalization, was framed in the pre-stellar start of the material causal chain.

From some of the last two classes of jurors, the following offered defense to a charge of the use of the mails to defraud, not unlike many miracles of the scores of thousands established as facts in the canonical procedure, would be met by the statement, in the common parlance of the jury, "Maybe so, but show me."

The congregation is assembled for a mass in the ancient cathedral at Quebec. The cardinal is there, and in the congregation are seated, on the central aisle, two American bishops, one a Baptist, the other a Methodist. Seated across the aisle is a young carpenter of German descent. He is the product of a Canadian English-speaking school, but is thinking with pride of the dominating power of the German people, of the destruction of Rotterdam and of Lidice.

Suddenly, in the empty aisle, there stands in the flesh another carpenter. He is not like anyone seated nearby, for he is clad in the working clothes of the carpenter's craft in Judea of some nineteen centuries ago. He is not the projection of either of the bishop's minds, for they [fol. 1671] happened to be thinking very calmly of their families at home, as were most of the plain people who, with the cardinal and the bishops, witnessed the miraculous presence of the visitor. Perhaps an agnostic psychiatrist would say he was a projection of the cardinal's mind, for he was praying for his visitor's presence and guidance. However, none in the congregation was under an emotional hysteria of impassioned mass psychological appeal, for the services had not been begun and the old cathedral was a homely and intimate edifice familiar to them since their infancy.

The cardinal, the two bishops and some twenty of the French Canadians, who understood English heard and are willing to testify to the presence of the Judean and the following happenings: The Canadian carpenter said, "You here! I did not believe, but those scars in your hands come from swinging no adz. What would you have me do?" To which the other replied, "My son, what you have been thinking of the glory of the brutal power of the strong over the weak is among the deepest of sins. Pray you may be forgiven and if you of your own free will truly believe, a greater power will come to you to speak the truth. In response to your preaching to other such sinners you will find the repent[illegible] sending you generous funds which you will spend for the help of other victims of force and greed." Thereupon the two carpenters, side by side, walked through the aisle and out of the cathedral.

Later there is an indictment against the Canadian for use of the mails to defraud, returned by a United States grand jury largely influenced by a clan of Americans who are oppressing the weak of a darker race, whom they re-

gard as not an integral part of a white protestant Christiandom. The accused has aroused hostility for his condemnation of their oppression. His principal appeal is the narration of the happenings in the cathedral in Quebec. He has asked money, in mailed letters, for their education and the response has been generous. He founds a great school, having an unusual chartered purpose—the employment of higher paid teachers and longer schooling for persons with the transmitted inferiority complex of the recently enslaved, than for their neighbors of free ancestors. [fol. 1672] The executive officer of the Society of White Christians, whom the accused has denounced, testifies for the prosecution, "That carpenter was doing a job on my house and he told me that he did not believe that any of these happenings occurred." The carpenter takes the stand, denies this, and testifies that he believes what he preached of the conversations with the Judean carpenter. The judge has difficulty in suppressing the derisive laughter of the court room.

Thereupon, in the excused absence of the jury, the defense offers to prove by the testimony of the cardinal, of the two bishops and of twenty others in the cathedral's congregation, that what the accused carpenter has said of his belief concerning what he saw and heard, they actually had seen and heard. The government cites United States v. Ballard, the court refuses the admission of the evidence, holding that while the carpenter was free to preach of these happenings, the mason Washington, the catholic Carroll and other founding fathers decided that it would be a denial of his religious freedom if he prove to be facts the happenings which he is charged with misrepresenting. The verdict of guilty follows.

2. *Such an indictment with the law as construed by the Supreme Court, in effect, licenses the clever swindler.*

It may be argued that Congress has so sanctified the mails that it has concluded it is better that one saint be convicted than a hundred sinners escape. The answer is clear. It is not true that such a rule would procure the conviction of the hundred sinners. Indeed, since the disproof of such claimed supernatural experiences is denied, the door is opened to the safe robbery of the trusting and susceptible.

A personable confidence shark may fabricate just such a scene in a cathedral he has visited. He knows that he cannot

be compelled to take the stand and be subjected to cross-examination as to his belief. He seeks the death and probate records for the estates of recently deceased husbands leaving insurance or a small property to sustain their wives and children—a long established source of such victims—and then selects those widows who are emotionally susceptible. He gains an emotional control by telling them of his belief in the happenings in the cathedral and takes over [fol. 1673] their insurance or other moneys with promises, just as charged to the Ballards, that he will give them the power to care for their children and bring them through to maturity in health and strength.

The widows have, for a time, comfort from the pretended celestial guidance; but the hunger and distress of their children convince them that they did not get what they paid for. He has sent a letter through the mails and is indicted.

However, having read the Ballard decision, he never intimated to anyone that he has not believed any of his representations of the happenings in the cathedral. In the absence of such evidence of want of belief, the prosecution offers as witnesses the cardinal, the two bishops, and the twenty other present in the cathedral on the occasion described by the accused, to testify that the claimed happenings did not occur. The defense cites United States v. Ballard, the testimony is excluded, and, since there is no evidence that the accused did not believe to be untrue what he had represented to have occurred, the jury is instructed to acquit.

It is my view that Congress, having imputed knowledge of the Supreme Court's decision, could not have intended to create in the mail fraud legislation a crime in which on the one hand the accused is denied such potent evidence of innocence and on the other the clever confidence man finds what is tantamount to a license to defraud the trusting.

The demurer should have been sustained and the motion to quash on the infirmity of the indictment should have been granted.

(Endorsed:) Opinion and Dissenting Opinion on Petition for Rehearing. Filed Dec. 26, 1945. Paul P. O'Brien, Clerk.

[fol. 1674] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 10059

EDNA W. BALLARD and DONALD BALLARD, Appellants,

vs.

UNITED STATES OF AMERICA, Appellee

CERTIFICATE OF CLERK, U. S. CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT TO RECORD CERTIFIED UNDER RULE 38 OF THE REVISED RULES OF THE SUPREME COURT OF THE UNITED STATES

I, Paul P. O'Brien, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing Transcript of Record in Five Volumes containing one thousand six hundred and sixty (1660) pages, numbered from and including 1 to and including 1660, to be a full, true and correct copy of the entire record, excluding original exhibits, of the above-entitled case in the said Circuit Court of Appeals, made pursuant to request of counsel for the appellants, and certified under Rule 38 of the Revised Rules of the Supreme Court of the United States, as the originals thereof remain on file and appear of record in my office.

Attest my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 4th day of January, 1946. Paul P. O'Brien, Clerk. (Seal.)

[fol. 1675] SUPREME COURT OF THE UNITED STATES

ORDER ALOWING CERTIORARI—Filed March 25, 1946

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Jackson took no part in the consideration or decision of this application.